

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1358

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

B
P/S

Docket Nos. 77-1358, 77-1380, 77-1381

UNITED STATES OF AMERICA,

Appellee,

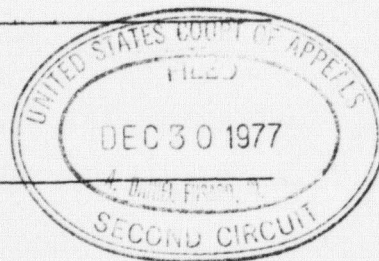
v.

ISIAH CRUTCH, EUGENE CRUTCH, and LOUIS BAS,

Defendants-Appellants.

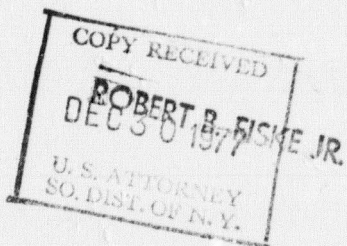
APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX FOR DEFENDANT-APPELLANT
ISIAH CRUTCH



DAVID BLACKSTONE
401 Broadway
New York, New York 10013
Tel. 226-6684

Attorney for Defendant-Appellant
Isiah Crutch



PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	Exhibit
DOCKET SHEET.....	A
INDICTMENT.....	B
CHARGE.....	C
DEFENDANT'S MOTION TO DISMISS INDICTMENT ON THE GROUND OF TAINTED EVIDENCE.....	D
GOVERNMENT AFFIDAVIT IN RE- SPONSE TO MOTION TO DIS- MISS THE INDICTMENT.....	E
ENDORSEMENT ORDER DENYING THE MOTION TO DISMISS THE INDICTMENT.....	F
LETTER TO DEFENDANT- APPELLANT ISIAH CRUTCH PURSUANT TO <i>ANDERS V.</i> <i>CALIFORNIA</i>	G

EXHIBIT A

EXHIBIT A

CRUTCH, ISLAH	0208 1	0857	04 07	77	0246	01
U.S. TITLE/SECTION	Dispos./Sentence	ORIGINAL COUNTS	U.S. MAG. CASE NO.			

U.S. TITLE/SECTION	OFFENSES CHARGED	ORIGINAL COUNTS	BAIL • RELEASE
18:371	Consp. to commit wire fraud	2&3, 7, 10, 12	☐ AMT ☐ Fugitive
18:1343	Wire Fraud	20&21, 25	☐ Denied ☐ Set ☐ Pers. Recog
18:2314	Interstate transportation of forged security	4-6, 8, 11, 13, 15, 17-19, 22-24, 26	☐ PSA ☐ Conditions
18:2312	Interstate transportation of stolen motor vehicle	9, 14-16, 27-29	☐ Date ☐ 10% Deposit ☐ Surety Bond ☐ Collateral ☐ 3rd ☐ Other

II. KEY DATES & INTERVALS				SENTENCE	
ARREST	INDICTMENT	ARRAIGNMENT	TRIAL	Disposition of Charges	
4-7-77	4-14-77	4-19-77	6-20-77	6-30-77	

MAGISTRATE				OUTCOME	
Search Warrant	Issued	DATE	INITIAL/NO	DISMISSED	
Summons	Issued	DATE	DATE	HELD FOR GO OR OTHER PROCEEDING IN THIS DISTRICT	
Arrest Warrant Issued	COMPLAINT	DATE	DATE	HELD FOR GO OR OTHER PROCEEDING IN DISTRICT BELOW	

U.S. Attorney or Asst. **Jeremy G. Epstein** 791-0036

ATTORNEYS **LEONARD LEVINSON** 11 Park Place New York, New York 10007

Bas-02, Caro-03, E. Crutch-04, Kim-05, Doe-06

DATE	PROCEEDINGS	EXCLUDABLE DELAY
4-7-77	Filed Indictment & Ordered sealed.....Lasker, J.	
4-12-77	Indictment Ordered unsealed.....Lasker, J.	
4-14-77	Deft. & atty. not present. Court directs a not guilty plea be entered. Case assigned to Carter, J. for all purposes.Lasker, J.	
4-14-77	Filed Govt's Affidavit for Writ of H/C Ad Prose. of this deft. RET 4-21-77.	
4-19-77	Filed Superseding Indictment & referred to Carter, J.Stewart, J.	
4-18-77	Filed Govt's AFFIDAVIT of Jereny G. Epstein for a Writ H/C Ad Prose. ret: 4-21-77.	
4-21-77	Pre-trial Conference held. Govt moves orally to dismiss this indictment (original). Application granted. CARTER, J.	3 - 4/21/77 - E.
6-13-77	Filed Govt's MEMORANDUM in opposition to the motion of deft to dismiss the indictment.	

Cont'd on page 2

DATE	DOCUMENT NO.	IV. PROCEEDINGS (continued)	PAGE TWO	V. EXCLUDABLE DELAY			
				Interval Section 1 (a)	Final Date and Date (b)	LT Code (c)	Total Days (d)
6-13-77		Jeremy G. Epstein. Filed Govt's AFFIDAVIT, i. response to the deft's motion to dismiss the indictment.					
6-20-77		Filed defts. affdvt. and notice of motion for an order dismissing the indictment on the grounds that the Grand Jury Indictment against deft. was based on tainted evidence. Ret. 6-14-77.		3	6-20-77	E	1
6-20-77		Filed Memo-End on defts. motion filed on 6-20-77....Accordingly the motion to dismiss is denied and the motion for continuance is denied.....So Ordered.....CARTER.J. m/n					
6-17-77		Filed Affirmation of Leonard J. Levenson, in support of the application for a writ of habeas corpus ad testificandum for Charles Curtis who is presently confined in the Sandstone Federal Penitentiary, Sandstone, Minnesota.					
6-17-77		Filed Affirmation of Leonard J. Levenson, in support to the application for a writ of habeas corpus ad testificandum for Clyde Evans who is presently confined in the Baltimore City Jail, Baltimore, Maryland.					
6-17-77		Filed Affirmation of Leonard J. Levenson, in support of the application for a writ of habeas corpus ad testificandum for Lewis Marcus who is presently confined in the Lewisburg Federal Penitentiary, Lewisburg, Pennsylvania.					
6-24-77		Filed Deft's Memorandum of Law.					
6-24-77		Filed Deft's Request on Voir Dire.					
6-20-77		Jury trial begun and cont'd.					
6-21-77		Trial Cont'd					
6-22-77		" "					
6-23-77		" "					
6-27-77		" "					
6-28-77		" "					
6-29-77		" "					
6-30-77		" " and concluded. Jury verdict Guilty on counts 1-27. Not guilty on cts. 28&29. No bail set and pre-sentence report ordered. Sent. adj'd to 7-27-77 at 9:30 A.M. .					
7-5-77		Filed Affidavit of this deft., on behalf of Louis Bas Jr.					
7-11-77		Filed AFFIDAVIT for a WRIT OF HABEAS CORPUS AD TESTIFICANDUM, for the body of Charles Curtis, on 7-17-77. RET: 7-9-77.					
7-25-77		Filed GOVT'S PRESENTENCE MEMORANDUM .					
7-26-77		Filed Deft's NOTICE OF MOTION for an order adj'ing the sentencing of the deft., to 9-7-77. RET: 7-27-77 at 9:30 AM. Affirmation of Leonard J. Levenson attached.					
7-26-77		Filed Writ of Habeas Corpus Ad Testificandum of LEWIS MARCUS. Writ satisfied 6-29-77, CARTER, J.					
7-27-77		Deft and atty present, Sentence adj'd to 9-7-77 at 10 A.M. Deft., remanded sentencing rules. CARTER, J.					
7-28-77		Filed MEMO-ENDORSED on deft's motion for an order adj'ing sentence, - Motion Granted. Sent, adj'd to 9-7-77 at 10:AM in courtroom 444. CARTER, J.					

Cont'd on page 3.

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

DATE	PROCEEDINGS
8-2-77	Filed CJA 23 - Financial Affidavit
8-2-77	Filed CJA 20 - Appointment & voucher for counseling services, Copy # 5.
8-17-77	Filed transcript of record of proceedings, dated <i>June 20-23, 1977</i>
8-17-77	Filed transcript of record of proceedings, dated <i>June 27-30, 1977</i>
8-15-77	Filed Deft's Writ of Habeas Corpus Ad Test, for the body of CLYDE EVANS. Marshal's return 8-10-77. (THIS IS A TRUE COPY).
8-24-77	Filed Deft's NOTICE OF MOTION for an order disqualifying ^{the} judge from imposing sentence upon the deft and excusing himself from all further matters relating to the docketed captioned matter, RET: 9-7-77 at 9:30 A.M. AFFIDAVIT of the deft in support of this motion attached/
8-24-77	Filed Deft's MEMORANDUM OF LAW in support of Deft's motion to disqualify the trial Judge.
8-26-77 9-7-77	Filed Deft's Sentencing Memorandum. Filed transcript of record of proceedings, dated <i>June 30, 1977</i>
9-7-77	Filed JUDGMENT AND PROBATION/COMMITMENT ORDER - The deft is hereby committed to the custody of the Atty Gen for impr., for a period of FIVE (5) YEARS on count 1, ONE (1) YEAR on counts 2,3,7,9,10,12,14,16,20,21,25 and 27 to run concurrently with each other and to run concurrently with count 1, Five (5) Years on each of counts 4,5,6,8,11,13,15,17,18,19,22,23,24 and 26 to run consecutively with sentence imposed on count 1, and to run concurrently with each other, CARTER, J. (all copies issued).
9-8-77	Filed MEMO-ENDORSED on deft's motion of 8-24-77- MOTION DENIED, CARTER, J. m/n
9-12-77	Filed Deft's NOTICE OF APPEAL to the USCA from the Judgment dated 9-7-77. Mailed Notices to the U.S. Atty and the counsel for the Appellant.
9-14-77	Filed Deft's NOTICE OF APPEAL to the USCA from the Judgment of 9-7-77. Mailed Notices to the U.S. Atty and the counsel for the Appellant.
9-15-77	Filed commitment to custody return , Del. delivered to <i>McC</i> on 9-7-77
9-15-77	Filed remand...7-28-77
10-3-77	Filed Notice of 3rd Supplemental Record., being certified and transmitted to the USCA
10-18-77	Filed transcript record of proceedings dtd: September 7, 1977
10-18-77	Filed Notice of transmittal of 5th Supplemental record to U.S.C.A.
11-15-77	<i>4-14-77</i>
11-17-77	Filed transcript of record of proceedings, dated 7-27-77
11-17-77	Filed Notice that the 6th Supplemental record on appeal has been certified and transmitted to the U.S.C.A.

EXHIBIT B

EXHIBIT B

3a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

INDICTMENT

77 Cr. 246

ISIAH CRUTCH,
LOUIS BAS, JR.,
LEONARD J. CARO,
EUGENE CRUTCH,
HEE SOO KIM, and
JOHN DOE, a/k/a "Eli Niccolo,"

Defendants.

FIRST COUNT

The Grand Jury charges:

1. From on or about the 1st day of January, 1975, up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, ISIAH CRUTCH, LOUIS BAS, JR., LEONARD J. CARO, EUGENE CRUTCH, HEE SOO KIM, and JOHN DOE, a/k/a "Eli Niccolo," the defendants, and Jerold Michael Heitzner, Suzan R. Abbott, Michael Zilberberg, and Lloyd Williams, named herein as co-conspirators but not as defendants, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other, and with others to the Grand Jury known and unknown, to commit offenses against the United States, to wit, violations of Sections 1343, 2312, and 2314 of Title 18, United States Code.

2. It was part of said conspiracy that the defendants and their co-conspirators, having devised and intending to devise schemes and artifices to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, would and did transmit and cause to be transmitted by means of wire and radio communication in interstate and foreign commerce, writings, signs, signals and sounds for the purpose of executing such schemes and artifices.

42

3. It was further a part of said conspiracy that the defendants and their co-conspirators would and did transport and cause to be transported in interstate and foreign commerce motor vehicles, knowing such motor vehicles to have been stolen and taken by fraud.

4. It was further a part of said conspiracy that the defendants and their co-conspirators would and did transport and cause to be transported in interstate and foreign commerce goods, wares, merchandises, securities, and money of a value in excess of \$5,000, knowing the same to have been stolen, converted, and taken by fraud.

5. It was further a part of said conspiracy that the defendants and their co-conspirators, with unlawful and fraudulent intent, would and did transport and cause to be transported in interstate and foreign commerce falsely made, forged, and counterfeited securities, knowing the same to have been falsely made, forged, and counterfeited.

OVERT ACTS

In furtherance of said conspiracy, and to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

1. Between January 1, 1975 and November 1, 1975, ISLAH CRUTCH, the defendant, obtained quantities of counterfeited bank checks from LOUIS PAS, JR., the defendant, at 980 Winthrop Street, Brooklyn, New York.

2. On March 20, 1975, co-conspirator Susan R. Abbott placed a telephone call from New York, New York to the Security National Rare Coin Company, San Antonio, Texas, during which she placed an order for approximately \$10,915 worth of gold coins on behalf of Law Williams and Associates, 10 East 38th Street, New York, N.Y.

3. On March 21, 1975, co-conspirator Susan R. Abbott placed a telephone call from New York, New York to

the Security National Rare Coin Company, San Antonio, Texas, during which she placed an additional order for approximately \$5,675 worth of gold coins.

4. On or about March 23, 1975, ISIAH CRITCH, the defendant, sent by special delivery mail to the Security National Rare Coin Company, San Antonio, Texas, an envelope containing a counterfeit check drawn on the account of Lew Williams and Associates at the Marine Midland Bank in the amount of \$25,500.

5. On March 25, 1975, co-conspirator Jerold Michael Weitzner received a shipment of approximately \$18,800 worth of gold coins from a messenger at John F. Kennedy Airport, Queens, New York.

6. On March 25, 1975, co-conspirator Jerold Michael Weitzner handed a package containing approximately \$18,800 worth of gold coins to ISIAH CRITCH, the defendant, in Queens, New York.

7. On March 26, 1975, co-conspirator Jerold Michael Weitzner received a shipment of approximately \$6,790 worth of gold coins from a messenger at John F. Kennedy Airport, Queens, New York.

8. On March 26, 1975, co-conspirator Jerold Michael Weitzner handed a package containing approximately \$6,790 worth of gold coins to ISIAH CRITCH, the defendant, in Queens, New York.

9. On or about April 1, 1975, ISIAH CRITCH, the defendant, gave co-conspirator Jerold Michael Weitzner \$2,500.

10. On April 24, 1975, co-conspirator Susan R. Abbott, using the name "Elaine Goldstein", placed a telephone call from New York, New York to the Continental Coin Company, Minneapolis, Minnesota, during which she placed an order for approximately \$65,521.25 worth of gold coins on behalf of the Hilton Investment Corporation, Two Penn Plaza, New York, New York.

11. On May 1, 1975, ISIAH CRUTCH, the defendant, had a conversation with co-conspirator Jerold Michael Heitzner by telephone in New York, New York in which ISIAH CRUTCH directed Jerold Michael Heitzner to go to the office of Brinks, Incorporated, 27 William Street, New York, New York.

12. On May 1, 1975, co-conspirator Jerold Michael Heitzner, using the name "Mr. Young," executed an agreement with Brink's Incorporated on behalf of the Hilton Investment Corporation, at the office of Brink's Incorporated, 27 William Street, New York, New York.

13. On May 20, 1975, ISIAH CRUTCH, the defendant, gave co-conspirator Suzan R. Abbott a counterfeit check drawn on the Barclay's Bank of New York in the amount of \$12,500.

14. On May 20, 1975, co-conspirator Suzan R. Abbott, using the name "Elonda D'Auria", purchased a 1973 Mercedes Benz, vehicle identification number 116033-12-009217, from Leonard C. Yaseen, 2 Bay Avenue, Larchmont, New York, with a counterfeit check drawn on the Barclay's Bank of New York in the amount of \$12,500.

15. On May 28, 1975, ISIAH CRUTCH, the defendant, and co-conspirator Suzan R. Abbott drove to Prestige Motors, Paramus, New Jersey.

16. On May 28, 1975, co-conspirator Suzan R. Abbott, using the name "Elonda D'Auria", sold a 1973 Mercedes Benz, vehicle identification number 116033-12-009217, to Prestige Motors, Paramus, New Jersey, for \$10,500.

17. On May 28, 1975, co-conspirator Suzan R. Abbott cashed a check for \$10,500 drawn on the account of Prestige Motors, Paramus, New Jersey, at the United Jersey Bank, Garden State Plaza, New Jersey.

7a

18. On May 23, 1975, co-conspirator Susan R. Abbott handed \$10,500 to ISIAH CRUTCH, the defendant.

19. On May 31, 1975, co-conspirator Jerold Michael Heitzner placed a telephone call from New York, New York to Dionisio Ramon Arenas in Morristown, New Jersey.

20. On May 31, 1975, ISIAH CRUTCH, the defendant, handed to co-conspirator Jerold Michael Heitzner a counterfeit check drawn on the account of Raleigh L. Davenport at the Manufacturers Hanover Trust Company in the amount of \$1,395.00.

21. On May 31, 1975, co-conspirator Jerold Michael Heitzner traveled from New York, New York, to Morristown, New Jersey.

22. On May 31, 1975, co-conspirator Jerold Michael Heitzner, using the name "Raleigh Davenport", purchased a Hasselblad camera from Dionisio Ramon Arenas in Morristown, New Jersey with a counterfeit check drawn on the account of Raleigh L. Davenport at the Manufacturers Hanover Trust Company in the amount of \$1,395.00.

23. On May 31, 1975, Jerold Michael Heitzner gave a Hasselblad camera to ISIAH CRUTCH, the defendant, at 67 E. 11th Street, New York, New York.

24. On or about June 5, 1975, ISIAH CRUTCH, the defendant, gave co-conspirator Jerold Michael Heitzner \$300.

25. On or about June 15, 1975, co-conspirator Susan R. Abbott placed a telephone call from New York, New York, to Samuel Higginbottom in Greenwich, Connecticut.

26. On June 16, 1975, ISIAH CRUTCH, the defendant, handed to co-conspirator Susan R. Abbott a counterfeit check drawn on the account of the Barclay's Bank of New York in the amount of \$13,500.

8a

27. On June 16, 1975, co-conspirator Suzan R. Abbott, using the name "Estina Walters," purchased a 1974 Mercedes Benz, vehicle identification number 10704412019066, from Samuel Higginbottom in Greenwich, Connecticut, with a counterfeit check drawn on the Barclay's Bank of New York in the amount of \$13,500.

28. On or about June 23, 1975, ISIAH CRUTCH, the defendant, and co-conspirator Suzan R. Abbott drove to Rally Motors, Glen Cove, New York.

29. On or about June 23, 1975, co-conspirator Suzan R. Abbott attempted to sell a 1974 Mercedes Benz, vehicle identification number 10704412019066, to Rally Motors, Glen Cove, New York.

30. On or about June 25, 1975, co-conspirator Suzan R. Abbott sold a 1974 Mercedes Benz, vehicle identification number 10704412019066, to Banzel Busch Motor Car Corporation, 28 Grand Avenue, Englewood, New Jersey, for \$11,200.

31. On or about June 25, 1975, co-conspirator Suzan R. Abbott cashed a check for \$11,200 at a bank in Englewood, New Jersey.

32. On or about June 25, 1975, co-conspirator Suzan R. Abbott handed \$11,200 to ISIAH CRUTCH, the defendant.

33. On July 23, 1975, LEONARD J. CARO, the defendant, purchased a 1974 Mercedes Benz, vehicle identification number 10704412019518, from Robert Slobodien, 128 Passaic Avenue, Fairfield, New Jersey, with a counterfeit check drawn on the Bankers Trust Company in the amount of \$14,000.

34. On July 23, 1975, LEONARD J. CARO, the defendant, drove a 1974 Mercedes Benz, vehicle identification number 10704412019518, from 128 Passaic Avenue, Fairfield, New Jersey, to 12 E. 13th Street, New York, New York.

35. On July 24, 1975, ISLAM CRUTCH, the defendant, instructed co-conspirator Suzan R. Abbott to take a 1974 Mercedes Benz, vehicle identification number 10704412019513, to E.G. Schana, Inc., 210 W. 70th Street, New York, New York.

36. On July 24, 1975, co-conspirator Suzan R. Abbott, using the name "Shailla Slobodien," attempted to sell a 1974 Mercedes Benz, vehicle identification number 10704412019513, to E.G. Schana, Inc., 210 W. 76th Street, New York, New York.

37. In or about July, 1975, ISLAM CRUTCH, the defendant, met co-conspirator Michael Zilberberg at 315 W. 57th Street, New York, N.Y.

38. In or about August, 1975, ISLAM CRUTCH gave to co-conspirator Michael Zilberberg one hundred counterfeit Bankers Trust Company official checks, having an aggregate face value of \$1,750,000.

39. On or about July 8, 1975, ISLAM CRUTCH, the defendant, gave to co-conspirator Jerold Michael Heitner two counterfeit checks, a check drawn on the Barclay's Bank of New York in the amount of \$14,607.13 and a check drawn on the Peoples Trust of New Jersey in the amount of \$12,550.

40. On July 8, 1975, HEE SOO KIM, the defendant, and co-conspirator Jerold Michael Heitner traveled from New York, New York to Park Ridge, Illinois.

41. On July 8, 1975, co-conspirator Jerold Michael Heitner opened an account at the Citizens Bank and Trust Company, Park Ridge, Illinois, in the name "Bernard Kantor."

42. On July 8, 1975, co-conspirator Jerold Michael Heitner deposited in an account opened at the Citizens Bank and Trust Company, Park Ridge, Illinois, a counterfeit check drawn on the People's Trust of New Jersey in the amount of \$12,550.

43. On July 3, 1975, HEE SOO KIM, the defendant, opened an account at the Citizens Bank and Trust Company in the name "Bette A. Lang."

44. On July 8, 1975, HEE SOO KIM, the defendant, deposited in an account opened at the Citizens Bank and Trust Company, Park Ridge, Illinois, a counterfeit check drawn on the Barclay's Bank of New York in the amount of \$14,607.13.

45. On or about August 29, 1975, ISIAH CRUTCH, the defendant, directed co-conspirator Suzan R. Abbott to place a telephone call to the Polaroid Corporation, Paramus, New Jersey.

46. On or about August 29, 1975, co-conspirator Suzan R. Abbott placed a telephone call from New York, New York to the Polaroid Corporation in Paramus, New Jersey during which she placed an order for 250 Polaroid SX-70 cameras at a total cost of \$33,000 on behalf of the International Monetary Exchange.

47. On or about September 4, 1975, co-conspirator Suzan R. Abbott placed a telephone call to Broser Bros., Inc., a moving company.

48. On September 4, 1975, ISIAH CRUTCH, the defendant, gave to co-conspirator Suzan R. Abbott a counterfeit check drawn on the Barclay's Bank of New York in the amount of \$33,000.

49. On September 4, 1975, co-conspirator Suzan R. Abbott delivered a counterfeit check drawn on the Barclay's Bank of New York in the amount of \$33,000 to an employee of Broser Bros., Inc.

50. On September 4, 1975, co-conspirator Jerold Michael Heitzner followed a Broser Bros., Inc. moving van from New York, New York to the Polaroid Corporation, Paramus, New Jersey.

51. On September 4, 1975, co-conspirator Jerold Michael Heitzner followed a Broses Bros., Inc., moving van from the Polaroid Corporation, Paramus, New Jersey, to 1160 Fifth Avenue, New York, New York.

52. On September 4, 1975, LEONARD J. CARO, the defendant, and co-conspirator Jerold Michael Heitzner supervised the unloading of 250 Polaroid SX-70 cameras from a Broses Bros., Inc. moving van to a storage room at 1160 Fifth Avenue.

53. On September 8, 1975, co-conspirator Susan R. Abbott placed a telephone call from New York, New York to the Polaroid Corporation in Paramus, New Jersey, during which she placed an order for 150 Polaroid SX-70 cameras at a total cost of \$19,800 on behalf of the International Monetary Exchange.

54. On September 9, 1975, ISLAH CRUTCH, the defendant, gave to co-conspirator Susan R. Abbott a counterfeit check drawn on the Barclay's Bank of New York in the amount of \$19,800.

55. On September 9, 1975, co-conspirator Susan R. Abbott delivered a counterfeit check drawn on the Barclay's Bank of New York in the amount of \$19,800 to an employee of Broses Bros., Inc.

56. On September 15, 1975, ISLAH CRUTCH, the defendant, gave LEONARD J. CARO, the defendant, a check drawn on the Barclay's Bank of New York in the amount of \$7,288.

57. On September 15, 1975, ISLAH CRUTCH and LEONARD J. CARO, the defendants, drove to a Western Union office at 100 Nicholas Court, Hempstead, New York.

58. On September 15, 1975, LEONARD J. CARO, the defendant, using the name "Paul Lyons," presented a check drawn on the Barclay's Bank of New York in the amount of \$7,288 to an employee of the Western Union office at

17a

100 Nicholas Court, Hempstead, New York and attempted therewith to send \$7,283 by wire to Philadelphia, Pennsylvania.

59. On or about September 1, 1975, BEE SOO KIM, the defendant, using the name "Eva Kai," placed a telephone call from New York, New York to Milton Eusonik in Ontario, Canada, during which she agreed to purchase a 1974 Rolls Royce, serial number CRB 16235, for \$45,150.

60. On September 5, 1975, co-conspirator Suzan R. Abbott, using the name "Eva Kai," spoke by telephone to Patrick G. Rio, an employee of the Surrey Limousine Service.

61. On September 6, 1975, ISIAH CRUTCH, the defendant, gave co-conspirator Suzan R. Abbott two counterfeit Bankers Trust Company cashier's checks, one in the amount of \$45,150 payable to Milton Eusonik, and the other in the amount of \$1,292 payable to United States Customs.

62. On September 6, 1975, co-conspirator Suzan R. Abbott sent by messenger service to Patrick G. Rio an envelope containing two counterfeit Bankers Trust Company cashier's checks, one in the amount of \$45,150, and the other in the amount of \$1,292.

63. On September 6, 1975, Patrick G. Rio traveled from New York, New York to the home of Milton Eusonik, 257 Burbank Road, Willoughdale, Ontario, Canada.

64. On September 6, 1975, Patrick G. Rio handed Milton Eusonik a counterfeit Bankers Trust Company cashier's check in the amount of \$45,150.

65. On September 6, 1975, Patrick G. Rio drove a 1974 Rolls Royce, serial number CRB 16235, from 257 Burbank Road, Willoughdale, Ontario, Canada, to a garage located at 57th Street and Second Avenue, New York, New York.

66. On September 7, 1975, Patrick G. Rio handed an envelope to the building superintendant at 1160 Fifth Avenue, New York, New York.

67. On or about September 7, 1975, ISLAM CRUTCH, the defendant, spoke by telephone to co-conspirator Jerold Michael Heitzner and instructed him to pick up an envelope at 1160 Fifth Avenue, New York, New York.

68. On or about September 8, 1975, co-conspirator Jerold Michael Heitzner picked up an envelope at 1160 Fifth Avenue, New York, New York.

69. On or about September 8, 1975, Jerold Michael Heitzner drove a 1974 Rolls Royce, serial number CRB 16235, from a garage located at 57th Street and Second Avenue, New York, New York, to a garage at 60th Street and Fifth Avenue, New York, New York.

70. On November 18, 1975, JOHN DOE, a/k/a "Elia Niccolo," the defendant, visited Michael Kalimian at 500 E. 83rd Street, New York, New York.

71. On November 19, 1975, co-conspirator Suzan R. Abbott gave JOHN DOE, a/k/a "Elia Niccolo," the defendant, a counterfeit check drawn on the Barclay's Bank of New York in the amount of \$7,900.

72. On November 19, 1975, JOHN DOE, a/k/a "Elia Niccolo," the defendant, purchased from Michael Kalimian a 1975 Cadillac, vehicle identification number 6L678Q423927, with a counterfeit check drawn on the Barclay's Bank of New York in the amount of \$7,900.

73. On December 11, 1975, co-conspirator Suzan R. Abbott, using the name "Elaine Dudley," telephoned the Regency Chauffeur Service, 1414 Metropolitan Avenue, New York, New York and requested the services of a chauffeur.

74. On December 15, 1975, John McClafferty, an employee of the Regency Chauffeur Service, went to a garage located at 300 E. 56th Street, New York, New York.

75. On December 15, 1975, John McClafferty drove a 1975 Cadillac, vehicle identification number 6L67SQ423927, from 300 E. 56th Street, New York, New York to Baltimore, Maryland.

76. On December 16, 1975, co-conspirator Susan R. Abbott spoke by telephone from New York, New York to John McClafferty in Baltimore, Maryland.

77. On December 24, 1975, EUGENE CRUTCH, the defendant, handed co-conspirator Lloyd Williams an envelope containing a counterfeit check drawn on the Barclay's Bank of New York in the amount of \$9,850.

78. On December 24, 1975, co-conspirator Lloyd Williams purchased a 1975 Lincoln Mark IV, vehicle identification number 5T39A260049, from Daniel E. Henderson, 3657 Broadway, New York, New York, with a counterfeit check drawn on the Barclay's Bank of New York in the amount of \$9,850.

79. On December 31, 1975, EUGENE CRUTCH, the defendant, and co-conspirator Lloyd Williams drove in a 1975 Lincoln Mark IV, vehicle identification number 5T39A260049, from New York, New York to Newark, New Jersey.

(Title 18, United States Code, Section 371.)

SECOND and THIRD COUNTS

The Grand Jury further charges:

On or about the dates hereinafter set forth, in the Southern District of New York, ISIAH CRUTCH and LOUIS RAS, JR., the defendants, unlawfully, wilfully and knowingly having devised and intending to devise a scheme and artifice to defraud and for obtaining the property of the Security National Rare Coin Company, San Antonio, Texas, by means of false and fraudulent pretenses, representations and promises, did transmit and cause to be transmitted by means of wire and radio communication in interstate commerce, from New York to Texas, signals and sounds for the purpose of executing such scheme and artifice:

COUNT

DATE

2

March 20, 1975

3

March 21, 1975

(Title 18, United States Code, Sections 1341 and 2)

FOURTH COUNT

The Grand Jury further charges:

On or about the 24th day of March, 1975, in the Southern District of New York, ISIAH CRUTCH and LOUIS RAS, JR., the defendants, unlawfully, wilfully, and knowingly, and with unlawful and fraudulent intent, did transport and cause to be transported in interstate commerce, from New York to Texas, a falsely made, forged, and counterfeited security, to wit, a check drawn on the Marine Midland Bank, New York, New York, in the amount of \$25,530.00, payable to the Security National Rare Coin Corporation, knowing the same to be falsely made, forged, and counterfeited.

(Title 18, United States Code, Sections 2314 and 2.)

FIFTH COUNT

The Grand Jury further charges:

On or about the 25th day of March, 1975, in the Southern District of New York, ISIAH CRUTCH and LOUIS BAS, JR., the defendants, unlawfully, wilfully and knowingly did transport and cause to be transported in interstate commerce, from Texas to New York, goods, wares and merchandise which had been stolen, converted, and taken by fraud, to wit, gold coins having an approximate value of \$13,803, knowing the same to have been stolen, converted, and taken by fraud.

(Title 18, United States Code, Sections 2314 and 2.)

SIXTH COUNT

The Grand Jury further charges:

On or about the 26th day of March, 1975, in the Southern District of New York, ISIAH CRUTCH and LOUIS BAS, JR., the defendants, unlawfully, wilfully and knowingly did transport and cause to be transported in interstate commerce, from Texas to New York, goods, wares and merchandise which had been stolen, converted, and taken by fraud, to wit, gold coins having an approximate value of \$6,790, knowing the same to have been stolen, converted, and taken by fraud.

(Title 18, United States Code, Sections 2314 and 2.)

SEVENTH COUNT

The Grand Jury further charges:

On or about the 14th day of April, 1975, in the Southern District of New York, ISIAH CRUTCH and LOUIS BAS, JR., the defendants, unlawfully, wilfully, and knowingly, having devised and intending to devise a scheme and artifice for obtaining the property of the Continental Coin Company, Minneapolis, Minnesota, by means of false and fraudulent pretenses, representations and promises, did transmit and cause to be transmitted by means of wire and radio communication in interstate commerce, from New York to Minnesota, signals and sounds for the purpose of executing such scheme and artifice.

(Title 18, United States Code, Sections 1343 and 2.)

17a
EIGHTH COUNT

The Grand Jury further charges:

On or about the 24th day of April, 1975, in the Southern District of New York, ISLAN CRUTCH and LOUIS BAS, JR., the defendants, unlawfully, wilfully, and knowingly, and with unlawful and fraudulent intent, did transport and cause to be transported in interstate commerce, from New York to Minnesota, a falsely made, forged, and counterfeited security, to wit, a check drawn on the First National Bank of Chicago, Chicago, Illinois, in the amount of \$65,521.25 payable to the Continental Galleries, knowing the same to be falsely made, forged, and counterfeited.

(Title 18, United States Code, Sections 2314 and 2.)

NINTH COUNT

The Grand Jury further charges:

On or about the 28th day of May, 1975, in the Southern District of New York, ISLAN CRUTCH and LOUIS BAS, JR., the defendants, unlawfully, wilfully and knowingly did transport and cause to be transported in interstate commerce, from New York to New Jersey, a motor vehicle, to wit, a 1973 Mercedes Benz, vehicle identification number 116033-12-009217, knowing the same to have been stolen and taken by fraud.

(Title 18, United States Code, Sections 2312 and 2.)

TENTH COUNT

The Grand Jury further charges:

On or about the 31st day of May, 1975, in the Southern District of New York, ISLAN CRUTCH and LOUIS BAS, JR., the defendants, unlawfully, wilfully, and knowingly, having devised and intending to devise a scheme and artifice for obtaining the property of Dionisio Ramon Arenas, Morristown, New Jersey, by means of false and fraudulent pretenses, representations and promises, did transmit and cause to be

transmitted by means of wire and radio communication in interstate commerce, from New York to New Jersey, signals and sounds for the purpose of executing such scheme and artifice.

(Title 18, United States Code, Sections 1343 and 2.)

ELEVENTH COUNT

The Grand Jury further charges:

On or about the 31st day of May, 1975, in the Southern District of New York, ISLAH CRUTCH and LOUIS BAS, JR., the defendants, unlawfully, wilfully, and knowingly, and with unlawful and fraudulent intent, did transport and cause to be transported in interstate commerce, from New York to New Jersey, a falsely made, forged, and counterfeited security, to wit, a check drawn on the Manufacturers Hanover Trust Company, New York, New York, in the amount of \$1,395.00, payable to Ramon Arenas, knowing the same to be falsely made, forged, and counterfeited.

(Title 18, United States Code, Sections 2314 and 2.)

TWELFTH COUNT

The Grand Jury further charges:

On or about the 15th day of June, 1975, in the Southern District of New York, ISLAH CRUTCH and LOUIS BAS, JR., the defendants, unlawfully, wilfully, and knowingly, having devised and intending to devise a scheme and artifice for obtaining the property of Samuel Higginbottom, Greenwich, Connecticut, by means of false and fraudulent pretenses, representations and promises, did transmit and cause to be transmitted by means of wire and radio communication in interstate commerce, from New York to Connecticut, signals and sounds for the purpose of executing such scheme and artifice.

(Title 18, United States Code, Sections 1343 and 2.)

JCE:ar
3-1678

19a
THIRTEENTH COUNT

The Grand Jury further charges:

On or about the 16th day of June, 1975, in the Southern District of New York, ISIAH CRUTCH and LOUIS EAS, JR., the defendants, unlawfully, wilfully, and knowingly, and with unlawful and fraudulent intent, did transport and cause to be transported in interstate commerce, from New York to Connecticut, a falsely made, forged, and counterfeited security, to wit, a check drawn on the Barclay's Bank of New York, New York, New York, in the amount of \$13,500, payable to Samuel Logan Higginbottom, knowing the same to be falsely made, forged, and counterfeited.

(Title 18, United States Code, Sections 2314 and 2.)

FOURTEENTH COUNT

The Grand Jury further charges:

On or about the 25th day of June, 1975, in the Southern District of New York, ISIAH CRUTCH and LOUIS EAS, JR., the defendants, unlawfully, wilfully and knowingly did transport and cause to be transported in interstate commerce, from New York to New Jersey, a motor vehicle, to wit, a 1974 Mercedes Benz, vehicle identification number 10704412019066, knowing the same to have been stolen and taken by fraud.

(Title 18, United States Code, Sections 2312 and 2.)

FIFTEENTH COUNT

The Grand Jury further charges:

On or about the 23rd day of July, 1975, in the Southern District of New York, ISIAH CRUTCH, LEONARD J. CARO, and LOUIS EAS, JR., the defendants, unlawfully, wilfully, and knowingly, and with unlawful and fraudulent intent, did transport and cause to be transported in interstate commerce, from New York to New Jersey, a falsely made, forged, and counterfeited security, to wit, a check drawn on the

Bankers Trust Company, New York, New York, in the amount of \$14,000, payable to Apollo Distributing Company, knowing the same to be falsely made, forged, and counterfeited.

(Title 18, United States Code, Sections 2314 and 2.)

SIXTEENTH COUNT

The Grand Jury further charges:

On or about the 23rd day of July, 1975, in the Southern District of New York, ISIAH CRUTCH, LEONARD J. CARO, and LOUIS BAS, JR., the defendants, unlawfully, wilfully and knowingly did transport and cause to be transported in interstate commerce, from New Jersey to New York, a motor vehicle, to wit, a 1974 Mercedes Benz, vehicle identification number 10704412019513, knowing the same to have been stolen and taken by fraud.

(Title 18, United States Code, Sections 2312 and 2.)

SEVENTEENTH COUNT

The Grand Jury further charges:

In or about August, 1975, in the Southern District of New York, ISIAH CRUTCH and LOUIS BAS, JR., the defendants, unlawfully, wilfully, and knowingly, and with unlawful and fraudulent intent, did transport and cause to be transported in interstate commerce, from New York to Washington, D. C., falsely made, forged, and counterfeited securities, to wit, one hundred checks drawn on the Bankers Trust Company, New York, New York, having an aggregate face value of \$1,750,000, knowing the same to be falsely made, forged, and counterfeited.

(Title 18, United States Code, Sections 2314 and 2.)

EIGHTEENTH COUNT

The Grand Jury further charges:

On or about the 5th day of July, 1975, in the Southern District of New York, ISIAH CRUTCH and LOUIS BAS, JR., the defendants, unlawfully, wilfully, and knowingly, and with unlawful and fraudulent intent, did transport and cause to be transported in interstate commerce, from New

71a

York to Illinois, a falsely made, forged, and counterfeited security, to wit, a check drawn on the People's Trust of New Jersey, Paramus, New Jersey, in the amount of \$12,550, payable to Bernard Kantor, knowing the same to be falsely made, forged, and counterfeited.

(Title 18, United States Code, Sections 2314 and 2.)

NINETEENTH COUNT

The Grand Jury further charges:

On or about the 8th day of July, 1975, in the Southern District of New York, ISIAH CRUTCH, LOUIS BAS, JR., and NEE SOO KIM, the defendants, unlawfully, wilfully, and knowingly, and with unlawful and fraudulent intent, did transport and cause to be transported in interstate commerce, from New York to Illinois, a falsely made, forged, and counterfeited security, to wit, a check drawn on the Barclay's Bank of New York, New York, New York, in the amount of \$14,607.13, payable to Bette A. Lang, knowing the same to be falsely made, forged, and counterfeited.

(Title 18, United States Code, Sections 2314 and 2.)

TWENTIETH and TWENTY-FIRST COUNTS

The Grand Jury further charges:

On or about the dates hereinafter set forth, in the Southern District of New York, ISIAH CRUTCH and LOUIS BAS, JR., the defendants, unlawfully, wilfully, and knowingly, having devised and intending to devise a scheme and artifice for obtaining the property of the Polaroid Corporation, Paramus, New Jersey, by means of false and fraudulent pretenses, representations and promises, did transmit and cause to be transmitted by means of wire and radio communication in interstate commerce, from New York to New Jersey, signals and sounds for the purpose of executing such scheme and artifice:

COUNT

DATE

20

August 29, 1975

21

September 3, 1975

(Title 18, United States Code, Sections 1343 and 2.)

yva

TWENTY-SECOND and TWENTY-THIRD COUNTS

The Grand Jury further charges:

On or about the dates hereinafter set forth, in the Southern District of New York, ISIAH CRITCH and LOUIS BAS, JR., the defendants, unlawfully, wilfully, and knowingly, and with unlawful and fraudulent intent, did transport and cause to be transported in interstate commerce, from New York to New Jersey, falsely made, forged, and counterfeited securities, to wit, checks drawn on the Barclay's Bank of New York, New York, New York, in the amounts hereinafter set forth, payable to the Polaroid Corporation, knowing the same to be falsely made, forged, and counterfeited:

<u>COUNT</u>	<u>DATE</u>	<u>AMOUNT OF CHECK</u>
22	September 4, 1975	\$33,000
23	September 9, 1975	\$19,800

(Title 18, United States Code, Sections 2314 and 2.)

TWENTY-FOURTH COUNT

The Grand Jury further charges:

On or about the 4th day of September, 1975, in the Southern District of New York, ISIAH CRITCH, LEONARD J. CARO, and LOUIS BAS, JR., the defendants, unlawfully, wilfully and knowingly did transport and cause to be transported in interstate commerce, from New Jersey to New York, goods, wares and merchandise which had been stolen, converted, and taken by fraud, to wit, two hundred and fifty (250) Polaroid SX-70 cameras having an approximate value of \$33,000, knowing the same to have been stolen, converted, and taken by fraud.

(Title 18, United States Code, Sections 2314 and 2.)

23 a
TWENTY-FIFTH COUNT

The Grand Jury further charges:

On or about the 1st day of September, 1975, in the Southern District of New York, ISLAN CRUTCH, LOUIS BAS, JR., and HEE SOO KIM, the defendants, unlawfully, wilfully, and knowingly, having devised and intending to devise a scheme and artifice for obtaining the property of Milton Rusonik, Ontario, Canada, by means of false and fraudulent pretenses, representations and promises, did transmit and cause to be transmitted by means of wire and radio communication in interstate and foreign commerce, from New York to Ontario, Canada, signals and sounds for the purpose of executing such scheme and artifice.

(Title 18, United States Code, Sections 1343 and 2.)

TWENTY-SIXTH COUNT

The Grand Jury further charges:

On or about the 6th day of September, 1975, in the Southern District of New York, ISLAN CRUTCH and LOUIS BAS, JR., the defendants, unlawfully, wilfully and knowingly, and with unlawful and fraudulent intent, did transport and cause to be transported in interstate and foreign commerce, from New York to Ontario, Canada, a falsely made, forged, and counterfeited security, to wit, a check drawn on the Bankers Trust Company, New York, New York, in the amount of \$45,150, payable to Milton Rusonik, knowing the same to be falsely made, forged, and counterfeited.

(Title 18, United States Code, Sections 2314 and 2.)

TWENTY-SEVENTH COUNT

The Grand Jury further charges:

On or about the 6th day of September, 1975, in the Southern District of New York, ISLAN CRUTCH, LOUIS BAS, JR., and HEE SOO KIM, the defendants, unlawfully, wilfully, and knowingly did transport and cause to be

74 R.
transported in interstate and foreign commerce, from Ontario, Canada to New York, a motor vehicle, to wit, a 1974 Rolls Royce, serial number CR5 16235, knowing the same to have been stolen and taken by fraud.

(Title 18, United States Code, Sections 2312 and 2.)

TWENTY-EIGHTH COUNT

The Grand Jury further charges:

On or about the 15th day of December, 1975, in the Southern District of New York, ISLAH CRUTCH, LOUIS BAS, JR., and JOHN DOZ, a/k/a "El Niocolo," the defendants, unlawfully, wilfully and knowingly did transport and cause to be transported in interstate commerce, from New York to Maryland, a motor vehicle, to wit, a 1975 Cadillac, vehicle identification number 6L67SQ423927, knowing the same to have been stolen and taken by fraud.

(Title 18, United States Code, Sections 2312 and 2.)

TWENTY-NINTH COUNT

The Grand Jury further charges:

On or about the 31st day of December, 1975, in the Southern District of New York, ISLAH CRUTCH, LOUIS BAS, JR., and EUGENE CRUTCH, the defendants, unlawfully, wilfully and knowingly did transport and cause to be transported in interstate commerce, from New York to New Jersey, a motor vehicle, to wit, a 1975 Lincoln Mark IV, vehicle identification number 5Y36A366034), knowing the same to have been stolen and taken by fraud.

(Title 18, United States Code, Sections 2312 and 2.)

FORWARDED

ROBERT M. FISKE, JR.
United States Attorney

*Incl. exhibit
Bas*

EXHIBIT C

EXHIBIT C.

Judge Charles C. Chase

75a

U.S. District Court

Ladies and Gentlemen:

571 CR 846

We now come to that part of the case where the evidence is in, the lawyers have presented their arguments, and you are about to exercise your final role which is to pass upon and to decide the fact issues that are in the case. You are the sole and exclusive judge of the facts. You pass upon the weight of the evidence. You determine the credibility of witnesses. You resolve such conflicts as there may be in the evidence and you draw such reasonable inferences as may be warranted by the testimony or exhibits in the case.

My function at this point is to instruct you as to the law that is applicable to the case. It is your duty to accept the law as I state it to you in these instructions, and to apply it to the facts as you find them. The logical result of that application is the verdict in the case.

76a

I have permitted each of you to take notes during the course of this trial. I expect you to use whatever notes you took merely as memory aids. They should not be allowed to take precedence over your independent memory of the facts. Moreover, merely because a fellow juror may have memorialized in his or her notes something contrary to your recollection, is not to be taken by you to mean that your memory is in error. It is your own recollection of the facts, and yours alone, which is controlling.

With respect to any fact matter, it is your recollection and yours alone that governs. Anything that counsel, either for the government or the defense may have said with respect to matters in evidence during the trial, in a question, in colloquy with the court, in argument, or in summation, is not to be substituted for your own recollection of the evidence.

So, too, anything the court may have said during the trial, or may refer to during the course of these instructions, as to any factual matter in evidence, is not to be taken in lieu of your own recollection. The case must be decided by you upon the sworn testimony of the witnesses, and such exhibits as were received in evidence and any stipulation entered into among counsel.

At times throughout this trial I have been called upon to make rulings upon various matters of law, as for example when a question put to a witness was objected to, or after a question was answered a motion was made to strike the answer, or the offer of a document was objected to.

I have sustained some objections and I have overruled others. I have received and rejected exhibits that were offered. It is essential in the performance of your duty that when anything was ordered stricken from the record or rejected you put it out of your mind and disregard it entirely. Similarly, if a question was asked and an objection to that question was sustained and no answer was given, the question itself should play no part in your consideration of the case. Please do not concern yourselves at all with my reasons for any of these rulings. These are purely legal matters, and of no concern to you.

Conferences at the bench were conducted at the request of the attorneys. As I have advised you, these conferences were solely on questions of law and are of no concern to you. You are not to draw any inferences against either side because of requests for such conferences or because such requests were denied.

It is your function to determine the truth or falsity of the testimony of each witness. No inference as to the credibility of any witness should be drawn from the fact that upon occasion I have asked questions of a witness. My questions were only intended for clarification or to expedite matters. They were not intended to suggest any opinion as to the credibility of a witness who appeared before you.

Now how do you determine the truth and how do you appraise the credibility of the witness? Well, simply put, you use your own plain, every day common sense.

The degree of credit to be given a witness should be determined by his or her demeanor here, his or her relationship to the controversy and to the parties, his or her bias or impartiality, the reasonableness of his statements, the strength or weakness of his recollection viewed in light of all other testimony and the attendant circumstances in the case.

You observed the witnesses. You heard their testimony. How did they strike you? Did their answers seem frank, open, truthful, candid? Or were they equivocal, deliberately confusing, or evasive? Or were they somewhere in between? How did each witness impress

you? So you take each one, and on the basis of your common sense and your everyday experience you determine whether or not you believe the witnesses and to what extent you believe them.

In passing upon the credibility of a witness, you may also take into account whether there were material inconsistencies or contradictions within his or her own testimony; whether a witness changed his or her testimony; the extent to which he or she has been corroborated or contradicted by other credible evidence.

An interested witness is not necessarily unworthy of belief. The interest of a witness in the outcome of this lawsuit is a factor, however, which you may consider in determining the weight and credibility to be given to that witness' testimony.

If you find that any witness has wilfully testified falsely to any material fact, you may disregard all of his testimony or accept such part of it as you believe worthy of belief as it appeals to your reason or judgment.

The testimony of a witness may fail to conform to the facts as they occurred because the witness is intentionally telling a falsehood, or because the witness did not accurately observe the events about which he testified, or because his recollection of what happened is at fault, or even because he has not expressed himself clearly in giving his testimony.

You are entitled to consider the possibility that where a witness is called upon to testify some time after the event, inconsistencies may result from an innocent mistake or lapse of memory rather than from a deliberate attempt to falsify or change facts. It is not unusual for a witness in a proceeding to utter inconsistencies at some stage,

— You may accept so much of
the testimony of a witness as you may deem true, and
disregard the rest. You are at liberty, if you deem
it appropriate, to disbelieve testimony in whole or
in part, even though it is not otherwise contradicted
or impeached.

The fact that the government is a party here -- that the prosecution is brought in the name of the United States of America -- entitles it to no greater consideration than that accorded to any other party to the litigation. In this connection, it should be remembered that the testimony of agents of the government are not to be entitled to any greater or lesser weight than any witness who is not an agent of the government. All parties, government and individuals alike, stand equal before this court of justice.

Certain of the witnesses called in this case have been identified to you as expert witnesses. These have been John Wills and Burwell Driver, who testified with regard to the fingerprints on checks purportedly seized by the government. Each of these men is qualified to render expert opinions relative to his area of expertise.

The law permits such an expert witness to testify in the form of an opinion, and the opinions stated by these experts are based on particular facts as the expert himself has observed them or as the attorney who questioned him has asked him to assume.

However, the expert is subject to the same rules of credibility as any other witness. You may reject his opinion if you find the facts different than he assumed or if you find his testimony unconvincing, and you may accept or reject the testimony as you would the testimony of any other witness. The opinions of the experts must be considered by you, but are not controlling in reaching a judgment. In short, you may give the expert testimony such weight as you feel it deserves. The determination in this case rests with you, ^{NOT} not with the experts.

In deciding this case you will be called upon to consider both direct evidence and circumstantial evidence. I would like to explain the difference between these two types of evidence.

Direct evidence is where a witness or a participant testified to what he saw, heard or observed, what he knows of his own knowledge, something which comes to him by virtue of his senses. A document can also contain direct evidence.

Circumstantial evidence is evidence of facts and circumstances from which one may infer connected facts which reasonably flow in the common experience of mankind. Stated somewhat differently, circumstantial evidence is evidence of facts from which other facts that are material in the lawsuit may be found by a process of inference.

Let me give you an example that I believe has nothing to do with the facts in this case.

Suppose you had a material issue in some case as to whether John Doe was drinking alcoholic beverages on some particular night. A witness might take the stand and testify that he had given whiskey to John Doe and had seen him drinking it. That would be what is termed direct evidence. If you believed the witness and thought he was able to report accurately, you could find from that direct evidence that John Doe had been drinking on the night in question.

On the other hand, you might have a witness testify that he had seen John Doe enter a tavern and then had seen him leave the tavern a few hours later, walking and talking in ways that suggested he was drunk. If you believed that witness and thought he was an accurate reporter you could find on the basis of that testimony that John Doe had been drinking on the night in question. You would be using circumstantial evidence to find the existence of a material fact in that hypothetical case.

Let me tell you for your purposes that there is no general rule of law and no general rule of good sense that places either of these two types of evidence, direct or circumstantial, in a general way on any higher or lower or different footing from the other. With respect to any evidence admitted into a trial record, whether it is direct or circumstantial, it is entitled to such weight, and you are permitted to draw such reasonable inferences, as your good judgment dictates in a particular case.

The weight and effect of any item or category of evidence depend not on whether it is to be categorized as direct or circumstantial but on the concrete significance of that particular piece of evidence in its trial setting and upon its intrinsic credibility and persuasive power in the light of your observations of the witness, your own general experience of things and your reasonable analysis of the whole record.

During the course of the trial several tape recordings were admitted into evidence as well as several transcripts which purported to reflect the conversations on the recordings. I instruct you that the transcripts are to be considered by you solely as aids in your comprehension of the tape recordings. They are not independent evidence of the conversations. In your understanding of the taped conversations you are to be guided by what you heard on the tapes, not by what you read in the transcripts.

There are times when different inferences may be drawn from facts, whether they are proved by direct or circumstantial evidence. The government asks you to draw one set of inferences, while the defendants ask you to draw another. It is for you to decide, and for you alone, what inferences you will draw.

40 c

As I advised you at the start of this trial, the indictment is merely an accusation, a charge. It is not evidence or proof of a defendant's guilt and no inference of any kind may be drawn from the indictment.

The government has the burden of proving the charges against each defendant beyond a reasonable doubt. It is a burden that never shifts and remains upon the government throughout the entire trial. A defendant does not have to prove his innocence. On the contrary, he is presumed to be innocent of the accusation contained in the indictment.

The presumption of innocence was in his favor at the start of the trial, continued in his favor throughout the trial, is in his favor even as I instruct you now. It remains in his favor during the course of your deliberations in the jury room.

It is removed only if and when you are satisfied that the government has sustained its burden of proving the guilt of a defendant beyond a reasonable doubt.

41a

Now, what is a reasonable doubt? It is a doubt based on reason, which arises from the evidence or lack of evidence in the case. It is a doubt that a reasonable man or woman might entertain. It is not a fanciful or speculative doubt; it is not an imagined doubt, it is not a doubt that a juror might conjure up in order to avoid performing an unpleasant task or duty. It is not proof to an absolute certainty. Let me repeat--it is a reasonable doubt. It is a doubt that appeals to your reason, to your judgment, your common understanding and your common sense--a doubt that would cause you to hesitate to act in matters of importance in your daily lives. On the other hand, the Government does not have to prove the guilt of a defendant beyond all possible doubt or to a positive certainty. If that were the rule, few people, however guilty they might be, would be convicted. If, when you consider the evidence in this case, you have a reasonable doubt that the Government has proved any element of the crime charged, then you must return a verdict of acquittal. You may not return a guilty verdict simply because you feel that it is more likely than not that a defendant committed the crime charged. A guilty verdict is only appropriate if each and every one of you is satisfied that a defendant's guilt has been proved beyond a reasonable doubt.

Admissions of a defendant are among the most effectual proofs in the law and constitute the strongest evidence against the party making it that can be given of the facts stated in the admission. Accordingly, you are entitled to give great weight to the defendants' admissions in this case. But, as with all the evidence, it is for you to determine what weight to give to the admissions.

The government has called as witnesses Suzan Abbott, Jerold Heitzner, Lloyd Williams and Leonard Caro, who, if their testimony is to be accepted, were accomplices in the crimes charged against the defendants in this case. The government has also called Steven Rowe, an individual commonly known as an informer or informant.

In the prosecution of crime, the government is frequently called upon to use witnesses who are accomplices or informers. Often it has no choice. The government must rely upon witnesses or transactions, such as they are. The law permits the use of informers, provided the rights of the defendants are not violated and, therefore, whether or not you approve of the use of informers should not enter into your deliberations.

The fact that Abott, Heitzner and Williams have admitted their participation to the crimes charged here, the fact that Caro has pleaded guilty to a serious crime, and the fact that Rowe has been convicted of a serious crime, especially crimes bearing on their veracity, may be considered by you as bearing on their credibility as witnesses in this case. Their testimony should be viewed with caution and scrutinized with care. Was any of their testimony a fabrication inspired by any motive of reward, of self-interest or hostility to the defendants? Were they induced to give false or colored testimony against the defendants by a promise or a hope or an expectation of favorable consideration by the government in connection with these or other matter? If you find that this was so, you ought unhesitatingly to reject it.

There is no requirement in the federal courts that the testimony of an accomplice be corroborated. The government contends that the testimony of the accomplices here is corroborated by other evidence with respect to several key portions of their testimony. However, even without such corroboration, conviction may rest upon the testimony of an accomplice, if you believe it and find it credible. It does not follow that because a person has acknowledged participation in the crimes charged against the defendants that he is incapable of giving a true version of what he testified to in the case on trial.

After a cautious and careful examination of the testimony of an accomplice or an informer and his demeanor upon the witness stand, if you are satisfied that he told the truth here as to certain events, there is no reason why you should not accept it as credible and act upon it accordingly.

The indictment in this case contains 29 counts. Each of these counts charges a separate offense or crime. It is your obligation to consider separately each of the individual charges, or counts, of the indictment, and to decide whether, as to each count, the government has or has not sustained its burden of proving beyond a reasonable doubt the guilt of each defendant of the charges in that particular count.

The indictment names six defendants. Only four of these defendants are on trial before you. They are: Isiah Crutch, Louis Bas, Jr., Eugene Crutch and Elie Nicoleau. These are the only persons whose guilt or innocence you must announce in your verdict.

Defendants Isiah Crutch and Louis Bas are charged in all of the counts of the indictment. Elie Nicoleau is charged in only Counts 1 and 28; and Eugene Crutch is charged in only Counts 1 and 29.

In the determination of innocence or guilt, you must bear in mind that guilt is personal. The guilt or innocence of the defendants on trial before you must be determined separately with respect to them, solely on the evidence presented, or the lack of evidence. In other words, the case against each defendant stands or falls upon the proof or lack of proof of the charges against him, and not against someone else, although, as I will explain to you shortly, in considering a particular defendant's guilt or innocence, you may have to determine the nature of the participation, if any, of the other named defendants.

One of the co-conspirators named in the indictment -- Leonard Caro -- and some co-conspirators not named in the indictment -- Jerold Heitzner, Suzan Abott and Lloyd Williams -- are not on trial here. Caro has pleaded guilty in this case. Heitzner, Abott and Williams have admitted their participation in the crimes. Caro's plea and the admissions of Heitzner, Abott and Williams are personal statements of guilt. They are not an indication that the other defendants on trial are guilty, and you are not to consider these statements as evidence against them.

Let me now turn to the indictment in this case. The indictment charges in 29 counts that the defendants or various of the defendants, violated federal laws with respect to wire fraud; interstate transportation of stolen property; interstate transportation of stolen motor vehicles; and interstate transportation of forged and counterfeited securities. The first count charges the four defendants before you and six others with conspiracy to violate these laws. I will refer to the first count as the conspiracy count.

47a

Counts 2 through 29 charge the defendants, or various of the defendants, with substantive or actual violations of the federal laws. Counts 2, 3, 7, 10, 12, 20, 21, and 25 charge defendants Isiah Crutch and Louis Bas with wire fraud.

Counts 4, 8, 11, 13, 15, 17, 18, 19, 22, 23, and 26 charge defendants Isiah Crutch and Louis Bas with the transportation of forged and counterfeited securities in interstate commerce.

Counts 5, 6, and 24 charge Isiah Crutch and Louis Bas with the transportation of stolen property worth \$5,000 or more in interstate commerce.

Counts 9, 14, 16, 27, 28, and 29 charge defendants Isiah Crutch and Louis Pas with the interstate transportation of stolen motor vehicles. Elie Nicoleau, in Count 28, and Eugene Crutch, in Count 29, are also charged with this offense.

Let me further explain the difference between the conspiracy count and the substantive counts.

The charge in Count 1, the conspiracy count, relates to violations of various federal laws. These laws are set out in Title 18 of the United States Code.

Section 1343 of Title 18 provides, in pertinent part:

"Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations or promises, transmits or causes to be transmitted by means of wire [or] radio . . . communication in interstate or foreign commerce, any writings, signs, signals . . . or sounds for the purpose of executing such scheme or artifice [is guilty of a crime]."

Section 2314 of Title 18 provides, in pertinent part:

"Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any falsely made, forged . . . or counterfeited securities, knowing the same to have been falsely made, forged . . . or counterfeited [is guilty of a crime]."

This section further provides, in pertinent part:

"Whoever transports in interstate commerce any goods, wares, [or] merchandise . . . of the value of \$5,000 or more, knowing the same to have been stolen, converted, or taken by fraud . . . [is guilty of a crime]."

Section 2312 of Title 18 provides, in pertinent part:

"Whoever transports in interstate . . . commerce a motor vehicle . . . knowing the same to have been stolen . . . [is guilty of a crime]."

Let me now read Count 1, which is the conspiracy count, except the alleged overt acts.

[READ Count 1 of the Indictment except the Overt Acts]

Section 371 of Title 18 of the United States Code provides, in pertinent part:

"If two or more persons conspire. . . to commit any offense against the United States. . . and one or more of such persons do any act to effect the object of the conspiracy, [each is guilty of a crime]."

In order to find any one of the defendants guilty of a conspiracy, as charged in Count 1, you must be satisfied that the government has proved the following elements beyond a reasonable doubt.

First, you must find the existence of the conspiracy charged in Count 1. In this regard, you must find that sometime between January 1, 1975, and the date of filing this indictment, April 19, 1977, an agreement existed between all of the alleged co-conspirators named in the indictment, or between any two of them, to accomplish at least one of the following objects: (1) to cause to be transmitted by wire and radio communication in interstate commerce messages in furtherance of a scheme or schemes to defraud; (2) to transport and cause to be transported in interstate commerce stolen motor vehicles; (3) to transport or cause to be transported in interstate commerce stolen and fraudulently obtained goods and merchandise of a value in excess of \$5,000; or (4) to transport and cause to be transported in interstate commerce forged and counterfeited checks.

In this regard, you need not find that the conspiracy existed for the entire time mentioned in the indictment or that the agreement was to accomplish all the objectives listed in the indictment. It is sufficient if it is shown that the agreement existed for any part of the time alleged and that at least one of the overt acts was committed in furtherance thereof during the period.

Also, as I shall explain in further detail later, you need not find that all persons mentioned reached an agreement. An agreement between two defendants or between any one defendant and another alleged co-conspirator is sufficient.

Second, that while the conspiracy was still in existence, the defendant whose guilt or innocence you are considering knowingly and wilfully associated himself with the conspiracy with knowledge of its alleged criminal purpose.

Third, that while the conspiracy was still in existence, at least one of the alleged conspirators, not necessarily the defendant you are considering, knowingly

52 a

1
2 committed at least one of the overt acts set forth in the
3 indictment at or about the time and place allged; and that such
4 act was committed in furtherance of the conspiracy.

5 If the government fails to establish each of these
6 three elements as to any of the defendants, beyond a reason-
7 able doubt, you must acquit those defendants as to whom the
8 government has failed to establish any element of this count.
9 If the government succeeds in satisfying this burden as to a
10 particular defendant, your duty is to convict that defendant
11 on this count.

12 Now let me elaborate more fully on each of the:
13 elements of Count One. As I have informed you, the first of
14 the elements which you must find that the government has
15 proved beyond a reasonable doubt is that the conspiracy charged
16 in the indictment existed. First, I want to discuss with you
17 what the term "conspiracy" means, because that term is here used
18 in a legal context and therefore has a somewhat different
19 meaning than it has when it is used colloquially.

20 What is a conspiracy? A conspiracy is a combina-
21 tion or agreement, of two or more persons, to accomplish a
22 criminal or unlawful purpose. The gist of the crime of
23 conspiracy is the unlawful combination or agreement to violate
24 the law. Whether or not the conspirators finally accomplished
25 what is alleged they conspired to do, is immaterial. That is

1
2 to say, the government is not obliged to prove that a purpose
3 of the conspirators was attained.

4 A conspiracy to commit a crime is an entirely
5 separate and distinct offense from the substantive crime which
6 is the object of the conspiracy. In order to find a defen-
7 dant guilty of conspiracy, there is no need to prove that the
8 substantive crime which is the object of the conspiracy has
9 been committed. The essence of the crime of conspiracy is an
10 agreement or understanding to violate other laws. Thus, it is
11 a criminal offense if two or more persons conspire to commit
12 any offense against the United States, and one or more of such
13 persons does any act to effect the object of the conspiracy.

14 It has often been said that a conspiracy is a
15 partnership in crime in which each member becomes the agent
16 of every other member. To establish a conspiracy, however, the
17 government is not required to show that the alleged conspira-
18 tors sat around a table and entered into a solemn compact,
19 orally or in writing, stating that they have formed a
20 conspiracy to violate the law and setting forth details of the
21 plans. It is sufficient if two or more persons, in any manner
22 through any contrivance, impliedly or tacitly, come to a
23 common understanding to violate the law. Express language
24 or specific words are not required to indicate assent or
25 attachment to a conspiracy. On the other hand, mere

1
2 similarity of conduct among various persons, and the fact that
3 they may have assembled together and discussed common aims and
4 interests, does not necessarily establish proof of the exis-
5 tence of a conspiracy.

6 If, upon consideration of all the evidence, direct
7 and circumstantial, testimonial and documentary, you find beyond
8 a reasonable doubt that the minds of at least two of the
9 alleged conspirators met in an understanding way and that they
10 agreed, as I have explained a conspiratorial agreement to
11 you, to work together in furtherance of the unlawful scheme
12 alleged in the indictment, then proof of the existence of the
13 conspiracy is satisfied.

14 If you find that a conspiracy existed beyond a
15 reasonable doubt, then you must consider the second element of
16 the conspiracy count; that is, whether the government has
17 established beyond a reasonable doubt that the defendant whose
18 guilt or innocence you are considering knowingly and wilfully
19 became a participant in the conspriacy with knowledge of its
20 alleged criminal purpose, and in furtherance of its unlawful
21 objectives.

22 You may not assume that a defendant joined a
23 conspiracy simply because you are convinced that he knew or
24 was associated or he had other dealings with people who
25 conspired to violate the law.

1
2 I charge you that mere association, even close or
3 repeated association, with some other alleged member of the
4 conspiracy is not sufficient, in and of itself, to support a
5 finding that a defendant was a member of the alleged conspiracy.

6 In addition, I instruct you that none of the
7 following is sufficient, in and of itself, to support a finding
8 that a defendant was a member of the alleged conspiracy:
9 mere attendance at a meeting with co-conspirators; or mere
10 presence at the scene of the crime; or mere knowledge of
11 conspiratorial acts or objectives, or mere unwitting partici-
12 pation.

13 The mere fact that two persons or more persons are
14 on trial together cannot be considered in any way as indicating
15 that the participated in a conspiracy to violate the law.

16 All of the conspirators need not be acquainted
17 with each other. They may not have previously associated
18 together. One of the defendants may know only one other
19 member of the conspiracy, but if he enters into an unlawful
20 agreement with that other member of the conspiracy, he becomes
21 a party thereto.

22 To conclude that a defendant was a member of a
23 conspiracy, you must find that he knew the unlawful purpose of
24 the alleged conspiracy, that knowing the purpose he intentional-
25 joined in the endeavor, and that he had an interest, in making

1
2 it succeed. It is not necessary, however, that you find that
3 each conspirator was fully informed as to the details or the
4 full scope of the conspiracy, or participated in every aspect
5 of the conspiracy. Similarly, you need not find that all of
6 the alleged co-conspirators knew each other. A person becomes
7 a member of a conspiracy by associating himself with a common
8 plan or scheme, knowing the central aim or principal purpose of
9 that common plan or scheme and intending to help bring about
10 its success.

11 To repeat, in order to find a defendant guilty on
12 the conspiracy count, you must find beyond a reasonable doubt
13 that the defendant acted knowingly and wilfully. Specifically,
14 you must find that the defendant knowingly and wilfully became
15 a participant in the conspiracy with knowledge of its unlawful
16 purpose and intending to help bring about its success.

17 Knowledge, wilfulness and intent exist in the mind.
18 Since it is not possible to look into a man's mind to see what
19 went on, the only way you have of arriving at a decision on these
20 questions is for you to take into consideration all the facts
21 and circumstances shown by the evidence, including the
22 exhibits, and to determine from all such facts and circumstances
23 whether the requisite knowledge, wilfulness and intent were
24 present at the time in question.

25 An act is done knowingly if it is done voluntarily

1
2 and purposefully and not because of mistake, inadvertence or
3 other innocent reason.

4 An act is wilful if it is done knowingly,
5 deliberately and with an purpose. An act is not done
6 wilfully if it is done as a result of a mistake, carelessness,
7 lack of an evil purpose, or for some other innocent reason.

8 It is not necessary for you to find that a defen-
9 dant knew he was breaking a particular law and whether or not
10 an act is knowing or wilful has nothing to do with the
11 defendant's personal or private reasons for committing the
12 act, so long as the act is done with an evil purpose.

13 The government has contended that various of the
14 defendants attempted to conceal their activities, for example,
15 through the use of a fictitious name or false docu-
16 ments. Such evidence, if you find it credible, may be
17 considered by you in determining the issue of knowledge,
18 wilfulness and intent.

19 Once you have found the conspiracy to exist and
20 a particular defendant to have knowingly and wilfully partici-
21 pated in it with knowledge of its unlawful purpose, the extent
22 of his participation has no bearing on his guilt or innocence.
23 The guilt of a conspirator is not measured by the extent of
24 or the duration of his participation. Even if he participated
25 in it to a degree more limited than that of his

1 co-conspirators, he is equally culpable so long as he was in
2 fact a conspirator. Similarly, it is not required that a
3 person be a member of the conspiracy from its very start. A
4 defendant may join a conspiracy at any point while it is in
5 progress, and be held responsible for all that has been done
6 before he joined, and all that may be done thereafter during
7 the existence of the conspiracy and while he remains a member
8 of the conspiracy.

9
10 Moreover a conspiracy, once formed, is presumed to
11 have continued until its objectives have been accomplished or
12 until there has been an affirmative act by the members of the
13 conspiracy to terminate it. Similarly, once a person is found
14 to be a member of a conspiracy, he is presumed to continue his
15 membership until the termination of the conspiracy or until he
16 affirmatively withdraws or disassociates himself from it.

17 For a single act to be sufficient to draw an actor
18 within the ambit of a conspiracy to violate the federal nar-
19 cotics laws, there must be independent evidence tending to
20 prove that the defendant in question had some knowledge of the
21 broader conspiracy, or the single act itself must be one from
22 which knowledge may be inferred. Thus, absent proof of
23 knowledge of the broader conspiracy, a single act such as
24 transportation of a stolen car
25 or actual sale or purchase is insufficient
evidence from which to draw an inference that a defendant

1
2 knew about or acquiesced in the larger conspiracy. However,
3 conduct consisting of only involvement in a single transaction
4 may nevertheless be treated as rationally permitting the infer-
5 ence of knowledge of the broader conspiracy where the single
6 act itself shows so much familiarity with or high-level
7 participation in the overall conspiracy as to be in and of
8 itself indicative of the broader conspiracy.

9 .Now let me instruct you as to how you are to con-
10 sider the acts and statements of alleged co-conspirators.

11 You will recall that throughout the trial the acts
12 and statements of one alleged co-conspirator in the absence of
13 other alleged co-conspirators were received only with respect
14 to the particular person or persons making them.

15 If you find that a conspiracy existed, then in
16 considering the second element, whether or not a particular
17 defendant was a member of the conspiracy, you may rely not only
18 on his own statements but on the statements and declarations
19 of the other alleged co-conspirators.

20 Moreover, if you find that a conspiracy existed,
21 then any act or declaration made during the conspiracy, and
22 in furtherance of it by a person found by you to have been a
23 member of the conspiracy may be considered against a defen-
24 dant, who you have found was also a member, even though such
25 act or declaration was made in the absence and without the

1
2 knowledge of that defendant.

3 Conversely, such acts or declarations of a
4 conspirator which were made before the existence or after the
5 termination of the conspiracy or which were not in furtherance
6 of the conspiracy, may be considered only against the person
7 who made them.

8 In proving the charges against the defendants on
9 trial before you, the Government introduced evidence of the
10 acts and declarations of co-conspirators who are not on trial
11 here and are not named as defendants. You may not draw any
12 inference, favorable or unfavorable, towards the Government or
13 the defendants on trial from the fact that certain persons
14 were not named as defendants or conspirators or having been
15 named, are not on trial before you now. You are not to specu-
16 late as to the reasons why certain individuals are not on
17 trial or are not named as defendants. Those matters are
18 wholly outside your concern and have no bearing on your func-
19 tion as jurors.

20 Now we come to the third element you must consider
21 as to Count One. If you have found that the alleged conspiracy
22 existed and that the defendant whose guilt you are considering
23 was a member of it, then you must consider the "overt act"
24 requirement.

25 The offense of conspiracy is complete when the

1
2 unlawful agreement is made and any single overt act is done
3 by one of the alleged conspirators in furtherance of the
4 conspiracy.

5 By the term "overt act" we mean an act committed
6 in an effort to accomplish or further some object or purpose
7 of the conspiracy. The overt act in this sense need not be
8 a crime itself. It must, however, be an act which follows
9 from the conspiracy and is directed toward accomplishment of
10 the criminal purpose of the conspiracy. I will now read the
11 overt acts charged in the indictment:

12 [Read Overt Acts:]

In addition, the government must show that at least one overt act was committed in the Southern District of New York. I charge you that the Southern District of New York includes Manhattan, the Bronx and Westchester County, new York.

If you find beyond a reasonable doubt that such a conspiracy existed as charged in the indictment and that during the existence of the conspiracy at least one of the overt acts alleged was knowingly done by one or more of the conspirators in furtherance of some object of the conspiracy, proof of the conspiracy offense is complete. It is complete as to each defendant found by you, the jury, beyond a reasonable doubt to have knowingly and wilfully been a member of the conspiracy at the time the overt act was committed, regardless of which of the conspirators committed the overt act.

While the indictment charges in Count 1 that the conspiracy existed from on or about January 1, 1975, and continuously thereafter up to and including April 19, 1977, I repeat that it is not essential for the government to prove that the conspiracy started and ended on or about those specific dates. It is sufficient if you find that in fact a conspiracy was formed and existed for some substantial time within the period set forth in the indictment and that at least one overt act was committed in furtherance thereof in that period.

Similarly, it is not necessary for the government to prove that each member of the conspiracy committed or participated in any particular overt act since the act of any member of the conspiracy done in furtherance of the conspiracy becomes the act of all the other members.

Let me remind you that in order to find a defendant guilty under Count 1, you must find that he was a member of the conspiracy charged in the indictment and not some other conspiracy.

65a

Now let me turn to the substantive counts in the indictment. Because they involve the same statute, I will read Counts 2, 3, 7, 10, 12, 20, 21, and 25 together.

[READ Counts 2, 3, 7, 10, 12, 20, 21, and 25]

With respect to these counts, the applicable statute is the one I have already read to you in connection with Count 1, namely, Section 1343 of Title 18. Let me read it once again in pertinent part:

"Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations or promises, transmits or causes to be transmitted by means of wire [or] radio. . .communication in interstate or foreign commerce, any writings, signs, signals. . .or sounds for the purpose of executing such scheme or artifice [is guilty of a crime]."

In order to find a defendant guilty of the offense charged in any one of the counts I have just read to you, you must find that the government has proved as to him each of the following essential elements beyond a reasonable doubt:

(1) that at or about the time alleged in that count the defendant devised or intended to devise, a scheme or artifice to defraud or a scheme or artifice to obtain money or property by means of false or fraudulent pretenses or representations;

(2) that the defendant acted wilfully and knowingly and with an intent to defraud; and

(3) that, for the purpose of executing the scheme, the defendant transmitted, or caused another to transmit, a communication by wire in interstate commerce.

The first element of the offenses charged which you must consider is whether the government has proved beyond a reasonable doubt that there existed either a scheme or artifice to defraud, or a scheme or artifice to obtain money and or property by false pretenses or representations. As used in this case the words "scheme" and "artifice" merely mean a plan for the accomplishment of an objective.

A scheme to obtain money or property by false representations refers to any plan by which one person seeks to obtain money or property from another by means of misrepresentations as to a material fact. Such misrepresentations may be made in two ways: (1) by statements of material facts which are not true; and (2) by the failure to state material facts which needed to be stated in order to permit a full understanding of the truth of the matters involved. A half truth may be no more honest than an outright falsehood and, therefore, a scheme to make false representations may be constituted by half truths which are calculated to mislead.

Furthermore, while a misrepresentation may be explicit, that is, an actual statement which misrepresents a fact, it may also be implicit. An implicit misrepresentation is a statement which, without specifically stating so, would lead one to believe that a fact is other than it really is. Such an implicit misrepresentation, if you find beyond a reasonable doubt that it was made, can satisfy the Government's burden of proof.

Of course, before you can find that there existed a scheme to obtain money or property by false representations, you must find that the facts allegedly misrepresented, whether by affirmative false statements or by the failure to state other relevant facts, were material to the matter under consideration. "Material" facts are facts which are reasonably necessary to a person before he can decide whether to act or not to act in regard to a particular matter.

In addition to a scheme to obtain money or property by false pretenses, the Government may also show a scheme to defraud. A "scheme to defraud" is a plan using any means, including but not limited to false pretenses, to obtain something of value by trick or deceit.

In deciding whether the government has satisfied its burden of proving the first element of the offenses charged in Counts 2, 3, 7, 10, 12, 20, 21, and 25, i.e., that there existed a scheme to defraud or a scheme to obtain money or property by false representations, you must decide whether the government has proved the particular scheme charged in the indictment.

There are six different fraudulent schemes alleged in the various wire fraud counts of this indictment. Counts 2 and 3 allege a scheme to defraud the Security National Rare Coin Company, San Antonio, Texas and to obtain its property, that is, gold coins. Count 7 alleges a scheme to defraud the Continental Coin Company, Minneapolis, Minnesota and to obtain its property, that is, gold coins. Count 10 alleges a scheme to defraud Dionisio Ramon Arenas and to obtain his property, a Hasselblad camera. Count 12 alleges a scheme to defraud Samuel Higginbottom and to obtain his property, a Mercedes Benz. Counts 20 and 21 allege a scheme to defraud the Polaroid Corporation, Paramus New Jersey and to obtain its property, SX-70 cameras. Count 25 alleges a scheme to defraud Milton Rusonik and to obtain his property, a Rolls Royce.

As to the second element, the government must prove beyond a reasonable doubt that Isiah Crutch and Louis Bas acted wilfully and knowingly. As I told you before, an act is wilful if it is done knowingly, deliberately and with an evil purpose. An act is not done wilfully if it is done as a result of a mistake, carelessness, lack of evil purpose or for such other innocent reason.

The government must also show beyond a reasonable doubt that the defendant you are considering acted with an intent to injure or defraud another. Intent to injure or defraud does not mean malice or ill will. It means to act knowingly and with the specific intent to deceive or cheat, for the purpose of either causing financial loss to another, or bringing about some financial gain to one's self.

If you have found that a defendant participated in a scheme to defraud and that such participation was wilful, knowing and with an intent to deceive, then you must consider whether the government has proved beyond a reasonable doubt the third essential element

-- that the specific use of wire communications in furtherance of the scheme to defraud charged in the respective counts, actually occurred and that these wire communications were transmitted in interstate commerce.

I charge you that a wire transmission includes a telephone call. "Interstate" simply means between two states, and "interstate commerce" would simply mean that sounds and signals comprising the telephone call moved from one state to another.

described in the Indictment were made, then, as a matter of law, such calls constituted the transmission of sounds by means of wire communication in interstate commerce within the meaning of the statute.

Furthermore, it is not necessary for the Government to prove that the defendant whose guilt or innocence you are considering personally placed the telephone call in question, or, indeed, that any defendant placed the call. It is sufficient if the proof shows that the defendant in question took steps which he knew or reasonably could have foreseen at the time would naturally and probably result in the use of wire communications in interstate commerce, whether or not that defendant actually knew of the interstate call.

71a

I instruct you that under the law applicable to this case, each transmission of an interstate wire communication for the purpose of executing a fraudulent scheme constitutes a separate crime.

Furthermore, I charge you that the government need not prove that a scheme or artifice to defraud actually succeeded. Therefore, in order to convict, it is not necessary for you to find that a defendant realized any gain from the scheme or that the intended victim suffered any loss.

Now we will turn to Counts 4, 8, 11, 13, 15, 17, 18, 19, 22, 23, and 26. Because these counts involve the same statute, I will read them together.

[READ Counts 4, 8, 11, 13, 15, 17, 18, 19, 22, 23, and 26]

With respect to these counts, the applicable statute is one I have already read to you in connection with Count 1, namely, Section 2314 of Title 18 of the United States Code. Let me read it once again in pertinent part:

"Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any falsely made, forged. . .or counterfeited securities, knowing the same to have been falsely made, forged. . .or counterfeited [is guilty of a crime]."

In order to find either Isiah Crutch or Louis Bas guilty of causing falsely made, forged, and counterfeited securities to be transported in interstate commerce, you must find the following elements beyond a reasonable doubt.

First, that on or about the date set forth in each count, the defendant you are considering caused to be transported in interstate commerce certain securities;

Second, that the securities were falsely made, forged, or counterfeited;

Third, that the defendant knew that the securities were falsely made, forged, or counterfeited; and

Fourth, that the defendant acted with unlawful and fraudulent intent.

With respect to the first element, I instruct you that as a matter of law a check is a security within the meaning of this statute. I have already instructed you as to the meaning of "interstate commerce" with respect to wire fraud. "Interstate commerce" here would simply mean that the checks involved moved from one state to another.

With respect to the second element of this offense, if you find that the checks that are the subject of these counts were not genuine obligations of the banks whose names they bear but rather were manufactured and used without the permission of that bank, you may find that they were falsely made and counterfeited. If you find that the checks were signed by individuals other than the bank officials authorized to sign such instruments, you may find that they were forged.

With respect to the third element, you must find beyond a reasonable doubt that the defendant you are considering knew that the checks were falsely made, forged or counterfeited. However, in order to prove a defendant guilty under this statute, the government need not prove that he knew that the checks were to be transported in interstate commerce. It need only prove that the defendant knew that the checks were falsely made, forged or counterfeited and that he caused, aided, abetted, or induced their transportation in interstate commerce.

With respect to the fourth element, you must find beyond a reasonable doubt that the defendant you are considering acted unlawfully and with fraudulent intent. As I have told you,

75a

fraudulent intent means to act knowingly and with the specific intent to deceive or cheat, for the purpose of either causing financial loss to another, or bringing about some financial gain to one's self.

Let me explain to you what aiding and abetting means. Title 18 of the United States Code, Section 2 provides:

"Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

Thus, a person who aids or abets another to commit an offense is just as guilty of that offense as he would be had he committed it himself.

Before you can conclude that a person aided or abetted, you must first find that the substantive crime charged -- the transportation of forged or counterfeited checks in interstate commerce -- was in fact committed.

Secondly, you must determine that the defendant in some way knowingly and intentionally associated himself with the criminal venture, that he participated in it as something he wished to bring about and that by his actions he tried to make the crime successful. You must find more than the defendant's mere presence or knowledge of the offense.

77a

In other words, if one, fully aware of what he is doing, plays a significant role in furthering and facilitating an act prohibited by law, he is equally as guilty as the person who actually and physically performed the act or acts, even though the latter played a greater part in the perpetration of the crime.

78 a

I will now turn to Counts 5, 6, and 24. These three counts involve the same statute and will therefore be read together.

Counts 5, 6, and 24
[READ Counts 5, 6, and 24]

With respect to these counts, the applicable statute is one I have already read to you in connection with Count 1, namely, Section 2314 of Title 18 of the United States Code. Let me read it again, in pertinent part:

"Whoever transports in interstate commerce any goods, wares, [or] merchandise. . . of the value of \$5,000 or more, knowing the same to have been stolen, converted, or taken by fraud . . . [is guilty of a crime]

In order to find either defendant Isiah Crutch or Louis Bas guilty of transporting stolen property in interstate commerce as charged in the indictment, you must find the following elements beyond a reasonable doubt.

79a

First, that on or about the date charged in each count, the defendant transported stolen property or property taken by fraud in interstate commerce;

Second, that the value of the property was \$5,000 or more; and

Third, that the defendant knew the property had been stolen or taken by fraud.

With respect to the first element, the government must prove to you beyond a reasonable doubt that the goods in question were stolen or taken by fraud. Property is stolen when it is taken with criminal intent to deprive the owner of the rights and benefits of ownership. A person takes property by fraud when he acts knowingly and with the specific intent to obtain the property by cheating and deceiving the owner.

If you are convinced beyond a reasonable doubt that the goods in question were stolen or taken by fraud, you must then determine whether they were transported by the defendant you are considering from one state to another.

You must next be convinced that the property mentioned in each count was valued at \$5,000 or more. "Value" means the market value of the market value of the property involved. That is, the price that a willing buyer would pay to a willing seller. The property involved in Count 5 is a shipment of gold coins bearing a price of \$18,800; in Count 6, it is a shipment of gold coins bearing a price of \$6,790; and in Count 24, it is a shipment of 250 Polaroid SX-70 cameras bearing a price of \$33,000.

In order to prove the defendant guilty under this statute, the government need not prove that the defendant knew the stolen or fraudulently obtained goods were to be transported in interstate commerce. It need only prove that

5/a

the defendant knew that the goods were stolen or fraudulently obtained and that he caused, aided, abetted, or induced their transportation.

As I have just told you, a person who aids or abets another to commit an offense is equally as guilty of that offense as he would be if he had committed it himself

Before you can conclude that a person aided or abetted, you must first find that the substantive crime charged -- the transportation of stolen or fraudulently obtained property valued at \$5,000 or more in interstate commerce, in this instance -- was in fact committed.

Secondly, you must determine that the defendant in some way knowingly and intentionally associated himself with the criminal venture, that he participated in it as something he wished to bring about and that by his actions he tried to make the crime successful. You must find more than the defendant's mere presence or knowledge of the offense.

I will now turn to the remaining counts. They are Counts 9, 14, 16, 27, 28, and 29. Again, I will read them together since they involve the same statute.

[READ Counts 9, 14, 16, 27, 28, and 29]

The applicable statute with respect to these counts is Section 2312 of Title 18 of the United States Code. As with the other statutes, I have already read it to you in connection with the conspiracy count. I will read it once again in pertinent part:

"Whoever transports in interstate. . . commerce a motor vehicle. . . knowing the same to have been stolen. . . [is guilty of a crime]."

In order to find a defendant guilty of the offense charge in these counts, the government must prove beyond a reasonable doubt the following elements.

First, that the automobile named in each count had been stolen;

Second, that on or about the date in question, the defendant transported this motor vehicle in interstate commerce; and

Third, that the defendant knew the motor vehicle to have been stolen.

§4a

With respect to the first element, I have already explained to you that property is stolen when it is taken with criminal intent to deprive the owner of the rights and benefits of ownership. It also means taken by fraud as well as outright theft.

To find that the motor vehicle in question was transported in interstate commerce you already know that you must be convinced beyond a reasonable doubt that the vehicle was transported from one state to another.

55a

In order to prove the defendant guilty under this statute, the government need not prove that the defendant knew the stolen motor vehicle was to be transported in interstate commerce. It need only prove that the defendant knew that the vehicle was stolen and that he caused, aided, abetted, or induced its transportation.

You have already been instructed that a person who aids or abets the commission of a crime is just as guilty of that offense as he would be had he committed it himself. Let me remind you, however, that before you can conclude that a person aided or abetted, you must first find that the substantive crime charged -- in this instance, the transportation of a stolen motor vehicle in interstate commerce -- was in fact committed.

Secondly, you must determine that the defendant in some way knowingly and intentionally associated himself with the criminal venture, that he participated in it as something he wished to bring about and that by his actions he tried to make the crime successful. You must find more than the defendant's mere presence or knowledge of the offense.

You have heard testimony that some of the defendants have performed certain acts which occurred before or after the acts charged in the indictments. Let me repeat the instructions I gave you at that time. The defendants here are not being charged with those acts and you cannot use them to determine whether they committed the crimes charged in the indictment.

Nor may evidence of an alleged similar act be considered for any other purpose whatever, unless you first find that the other evidence in the case, standing alone, establishes beyond a reasonable doubt that the accused did the particular act charged in the indictment in this case.

However, if you do find, beyond a reasonable doubt, based solely on evidence other than the similar acts, that the defendants did any of the acts charged in the indictment in this case, then you may consider evidence as to the similar acts in determining the state of mind or intent of the defendants at the time they did those acts. That is to say, if prior, similar acts have been established by the government then you may, but are not obliged to, draw the inference that, in doing the act charged in this case, the accused acted knowingly and intentionally, and not because of mistake or accident or other innocent reason.

57a

There has been testimony that defendants Nicoleau and Bas, at the time of their arrests, each made certain statements that were exculpatory; that is, statements that tended to show their innocence. The government contends that those statements were false. If you find, beyond a reasonable doubt, that a particular defendant made false exculpatory statements, then such statements are circumstantial evidence of guilty consciousness. They may not be considered against any other defendant. Such statements, even if false, are not sufficient evidence by themselves to support a conviction.

Now let me address myself to more general considerations which you must bear in mind during your deliberations.

First, I must emphasize again that there are four defendants on trial here and you must consider separately whether the defendants charged have been proven guilty, beyond a reasonable doubt.

It is your duty to give separate and personal consideration to the case of each defendant. When you do so you should analyze what the evidence in the case shows with respect to that individual, leaving out of consideration entirely any evidence admitted solely with regard to the other defendants. Each defendant is entitled to have his case determined from the evidence in the case which may be applicable to him. The fact that you may find one of the accused guilty or not guilty of any particular count should not influence your verdict with respect to the other defendants or with respect to any other count.

59a

As I told you before, the government has the burden of proving the charges against each defendant beyond a reasonable doubt. A defendant does not have to prove his innocence. A defendant has the right to remain silent. He does not have to testify or present any evidence or witnesses in his behalf, and you may not draw any inference or conclusion or form any prejudice because a defendant did not testify.

On the other hand, the law permits a defendant to testify in his own behalf if he wishes to do so, and Louis Bas has elected to testify in this case.

The testimony of a defendant must be considered by you as would the testimony of any other witness. You must determine, therefore, the credibility of Louis Bas' testimony and in so doing you must consider the deep personal interest which every defendant has in the outcome of his case. Indeed, it is fair to say that a defendant has the greatest stake in the outcome. A defendant's interest in the result of his trial is of a character possessed by no other witness. That interest requires that you receive such testimony with caution and subject it to the most careful scrutiny. However, it by no means follows that simply because a person has a vital interest in the end result that he is not capable of telling a truthful and straightforward story, and it is for you to decide to what extent, if at all, his interest has affected or colored his testimony.

91a

Defendant Louis Bas has introduced evidence of his good reputation in his community for honesty, integrity and truthfulness. The introduction of such evidence bears upon the unlikelihood that a person with this character would perpetrate a fraud or the crimes charged in this Indictment, and, therefore, you should consider this evidence in the case in determining whether the prosecution has proved defendant Louis Bas' guilt beyond a reasonable doubt.

Evidence of good reputation may, in itself, create a reasonable doubt as to guilt where without such evidence no reasonable doubt would exist.

On the other hand, if on all the evidence you are satisfied beyond a reasonable doubt that a defendant is guilty, a showing that he previously enjoyed a reputation of good character does not justify or excuse the offense and you should not acquit him merely because you believe that he is a person of good repute.

The testimony of a character witness is a reflection of a reputation in the community. Testimony of character reputation is not to be taken by you as the witness' opinion as to the guilt or innocence of a defendant. The guilt or innocence of a defendant is for you and you alone to determine. Consequently, you may consider whether those with whom a defendant came in contact previously and with whom he established a community reputation were not informed as to matters bearing on his character. That is a matter for you to determine from all of the evidence.

Now, under your oath as jurors you cannot allow a consideration of the punishment which may be inflicted upon a defendant, if he is convicted, to influence your verdict in any way or in any sense enter into your deliberation.

The duty of imposing sentence rests exclusively upon the Court. Your function is to weigh the evidence in the case and to determine the guilt or innocence of a defendant solely upon the basis of such evidence and the law.

You are to decide the case upon the evidence, and the evidence alone, and you must not be influenced by any assumption, conjecture, or sympathy, or any inference not warranted by the facts.

If you fail to find beyond a reasonable doubt that the law has been violated, you should not hesitate for any reason to find a verdict of acquittal. But on the other hand, if you should find that the law has been violated as charged, you should not hesitate because of sympathy or any other reason to render a verdict of guilty.

I would like to point out that you should not enter the jury room with any preconceived pride of opinion. You should not be unwilling to be convinced by intelligent argument with your fellow jurors. Each juror has to answer to his or her own conscience, and each has to decide this case for himself or herself, but in so doing you should be willing to consider the views of the other jurors and to talk things out and try your best to reach a unanimous agreement.

Your verdict must be one with which each juror agrees.

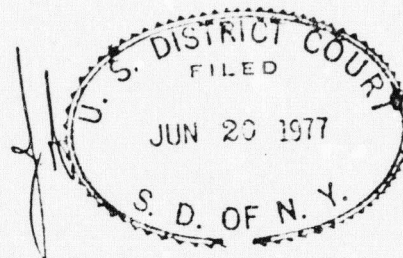
If during your deliberations you deem it necessary to have a copy of the indictment, or desire any of the exhibits, they will be sent in to you on request. If you wish any portion of the testimony read, any of the tapes replayed, or the court's charge reread, that will be done.

In conclusion let me say: Every criminal case is important. It is important to the government and it is important to the defendant. It is your obligation to decide the case on the evidence and on the law as I have charged it to you; I give the case to you with the assurance that you will do just that.

EXHIBIT D

EXHIBIT D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
UNITED STATES OF AMERICA,

:

S 77 CR 246

-against-

:

ISIAH CRUTCH,

:

NOTICE OF MOTION

Defendant.

:

-----X
S I R :

PLEASE TAKE NOTICE, that upon the annexed affidavit of
LEONARD J. LEVENSON, ESQ., sworn to the 24th day of May, 1977,
and upon the exhibits attached hereto and upon all the proceedings
had herein, the undersigned will move this Court at the Courthouse
at Foley Square, New York, New York, before the Honorable Robert
L. Carter, on the 14 day of June 1977, at 10:00 A.M. in the fore-
noon of that day, or as soon thereafter as counsel can be heard,
for an order ~~pursuant to Rule 48(b) of the Federal Rules of~~
~~Criminal Procedure, dismissing the indictment herein for pre-~~
~~indictment delay and for a further or alternate order~~ dismissing
the indictment on the grounds that the Grand Jury indictment
against defendant, was based on tainted evidence, and for such
other and further relief as this Court deems just and proper.

Dated: New York, New York
May 24, 1977

Yours, etc.,

LEONARD J. LEVENSON
Attorney for Defendant
Office & P.O. Address
11 Park Place
New York, New York 10007
(212) Re 2-0522

20

TO:

ASSISTANT UNITED STATES ATTORNEY,
JEREMY EPSTEIN
United States Attorneys Office
United States Courthouse Annex
One St. Andrews Plaza
New York, New York

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA, :

-against- :

ISIAH CRUTCH, :

Defendant. :

AFFIRMATION

-----X

STATE OF NEW YORK)

)

COUNTY OF NEW YORK)

LEONARD J. LEVENSON, affirms, under penalty of perjury:

1. I am the attorney for defendant ISIAH CRUTCH, and make this affirmation in support of a motion to dismiss the indictment herein on the grounds that the indictment was obtained by the use of tainted evidence.

2. Defendant was indicted in a twenty-nine count indictment on April 7, 1977 [77 Cr. 246] which was subsequently superseded on April 19, 1977. The indictment named five other defendants which involved the following charges:

Count 1 - Conspiracy to commit wire fraud.

Counts 2,3,7,
10,12 - Wire fraud.

Counts 4,5,6,8,
11,13,15,17,- Interstate transportation of
19,22-24,26 forged security.

Counts 9,14-16, Interstate transportation of
27-29 - stolen motor vehicle.

The indictment names Susan Abbott as a co-conspirator.

3. Defendant CRUTCH, met Miss Abbott in December, 1974. Shortly thereafter, they began to cohabit and they lived together until Mr. Crutch was imprisoned in Allenwood Prison Camp for an unrelated federal offense on October 3, 1975. It should be noted that during that period of time, Miss Abbott and Mr. Crutch held themselves out as man and wife.

4. On May 12, 1975, Jerold Heitzner, another co-conspirator was arrested and charged with wire fraud. Mr. Heitzner was subsequently tried and convicted in January, 1976. His arrest made Susan Abbott a target of a federal investigation late in 1975 and during the early months of 1976. It should be noted that although Miss Abbott was living with Mr. Crutch, she was not completely aware of all his affairs. In January, 1976, Miss Abbott was directed to appear for a lineup at the New York office of the F.B.I. at 201 East 69th Street, which she ultimately attended on February 18, 1976. [See Exhibit "A"- "F", F.B.I. reports of various lineups].

5. In preparation for the forthcoming lineups, Miss Abbott consulted defendant CRUTCH who suggested that she contact Ivan Fischer but advised her to have Mr. Fischer visit him at the Metropolitan Correction Center before retaining him. Apparently, Mr. Fischer had been recommended to Mr. Crutch but they had never met. The meeting was intended as an interview of Mr. Fischer by

defendant to determine his suitability in representing Miss Abbott. Mr. Crutch gave Miss Abbott his approval and Mr. Fischer began representing her. See Exhibits "A"- "F."

6. It should be noted that Mr. Crutch had been transferred from Allenwood to Metropolitan Correction Center in New York to resolve a pending New York State case.

7. In March, Miss Abbott was now being represented by Mr. Fischer in two New York State cases and plea negotiations were underway designed to cover Miss Abbott's two state cases and one anticipated federal case. See Pre-Trial Conference minutes of May 18, 1976. Possibly because of the pressure of the pending cases or because of other reasons known to Miss Abbott alone, she left New York in late March of 1976 just after Mr. Crutch was transferred to Lewisburg Penitentiary.

8. On May 3, 1976, Miss Abbott was arrested in Indianapolis.

9. On May 6, 1976, she was indicted under 76 Cr. 459 and the case was referred to Judge Wyatt who had previously sentenced Jerold Heitzner. On May 18, 1976, a representative from Mr. Fischer's office appeared at a pre-trial conference before Judge Wyatt. The following day a formal notice of appearance was filed by Mr. Fischer on behalf of Susan Abbott [See docket sheet. United States of America v. Susan Abbott, Exh.H]. On May 20th she pleaded

guilty to one count of fraud by wire communication. Sentencing was set for June 17, 1976.

10. In June, 1976, Mr. Crutch was transferred from Lewisburg to Metropolitan Correction Center for sentencing on his state case. Shortly after he arrived, he contacted Mr. Fischer and requested an appointment. On June 17, 1976, Mr. Fischer conferred with Mr. Crutch wherein he advised Mr. Crutch that Miss Abbott had pleaded guilty in May and that her sentencing had been originally scheduled for June 17th and had been adjourned until August 17, 1976. He also advised Crutch that the government had knowledge of his involvement with Abbott and Heitzner but apparently did not have sufficient evidence to go to the Grand Jury. Indeed, the indictment against Crutch was not filed until ten months after this June meeting. Yet, only two or three months after Susan Abbott began cooperating with the government towards the end of the year, an indictment against Crutch was handed up. These facts lead one to the inevitable conclusion that Susan Abbott was instrumental in bringing about the indictment of Isiah Crutch.

11. During this crucial June 17, 1976 conference, Mr. Fischer agreed to represent Crutch. On page 11 of Susan Abbott's sentencing minutes, the following colloquy occurred:

"The Court: Do you represent him?

Mr. Fischer: No your Honor. I have, however, participated in negotiations seeking a disposition of all of the loose ends, I would characterize, of this investigation, so that it could all be properly dealt with by the prosecution and the courts. In view of the potential conflict situation that occurred with his instant lawyer,* quite frankly, I have undertaken negotiations on his behalf as well..." [Emphasis supplied]

No matter how Mr. Fischer wishes to characterize his representation of Mr. Crutch, it was nothing more or less than defacto representation. Indeed, on June 1, 1977, I conferred with Mr. Fischer by telephone and he acknowledged to me that he represented both Crutch and Abbott but that he ultimately "dropped Crutch" because he lied to him. When asked by me what Susan Abbott testified to in the Grand Jury, he stated that he could not divulge this information. The implication was clear that she had in fact testified in the Grand Jury.

12. During the course of Mr. Fischer's representation following the June 17th conference, Crutch met frequently in joint conferences with Fischer, Susan Abbott, and on occasion with Mr. Fischer's associate, Barry Bohrer. From June 17, 1976

* The "conflict situation" referred to by Mr. Fischer involved Mr. Crutch's prior attorney, Mr. Leonard Edelstein, who is unable to represent Mr. Crutch because he was a target of federal investigation involving the same matters for which Mr. Crutch was ultimately indicted.

until Abbott's sentencing on August 17, 1976, Mr. Crutch gave Fischer and Bohrer [often in the presence of Susan Abbott] organized and detailed information regarding many of the allegations contained in the indictment. Indeed, this information took the form of providing them with a key to a safety deposit box which contained plates and forged instruments allegedly belonging to Mr. Crutch. This information was made known to Miss Abbott and it is doubtful that Mr. Crutch would have done so but for the feeling engendered by Fischer's dual representation. On page 11-12 of Miss Abbott's sentencing, the following transpired:

"Mr. Fischer: In addition, she is prepared to make a form of restitution that, limited to her means. This I discussed with Mr. Epstein. Beyond that, there are things that I have characterized as laying the golden eggs of this illicit operation. The plates that were used, your Honor, to manufacture this gross amount of unlawful paper.

The Court: You mean the counterfeit checks and the other papers that were used?

Mr. Fischer: Yes your Honor. I have told the government that I have in my possession a safe deposit key. I am advised that therein are plates and a large amount of forged instruments."

Additionally, Mr. Crutch gave to either Mr. Fischer or Susan Abbott, in Fischer's presence, a diagram of the organizational structure of Crutch's group of which Miss Abbott was only imperfectly aware. Upon information and belief, Miss Abbott's subsequent testimony before a grand jury was based on information obtained from Crutch during conferences with Fischer and Abbott.

13. On August 17th, Miss Abbott was sentenced to three years in a federal penitentiary. Shortly thereafter, she began cooperating with the United States Attorney. On December 14, 1976 a motion to reduce her sentence was made and granted to the extent of reducing her three year sentence to two years.

It should be noted that the United States Attorney was aware of all these negotiations.

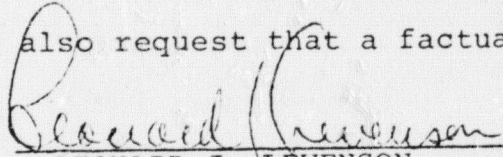
14. On numerous occasions Ivan Fischer entered into negotiations for the disposition of the Crutch case which had as yet not been reduced to the indictment stage. Negotiation centered around an offer by Crutch to plead to two, 5 year counts prior to Miss Abbott's sentence. See Sentencing minutes of Susan Abbott. This offer apparently was rejected by Mr. Epstein. Significantly, Mr. Epstein, while aware that Miss Abbott might become a cooperating witness did nothing to assure Mr. Crutch that there would be no future conflict which was there for Mr. Epstein to see if he chose to but look. After her sentence, Miss Abbott advised Mr. Crutch that she intended to cooperate and testify against him in both Grand Jury and at trial.

15. Significantly, the affidavit of Mr. Epstein in support of his motion under Rule 35 on December 14, 1976 indicated that Susan Abbott had been debriefed by F. B. I. agents in preparation for more complete "cooperation" but that because of "scheduling

problems" her assistance had not been fully utilized as of Dec. 14, 1976.

16. This affirmation is based on public records, transcripts, FBI reports, conversations with the defendant and interviews with other parties. I have been on trial before Judge Duffy since May 17, 1977 and consequently have not had the time to submit a more complete statement of facts earlier. A memorandum of law will be submitted by Friday, June 10th or Monday, June 13th together with additional documents if it found to be necessary.

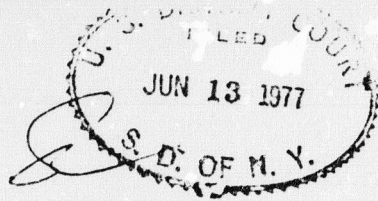
17. The question raised by this motion is not obvious and has many subtle overtones. These include questions of conflict of interest, effective assistance of counsel, privilege, and the duty of an Assistant United States Attorney in eschewing the benefits that may derive from acts of questionable propriety by a defendant's attorney. To permit me to fully and adequately brief these questions and to permit the court to adequately digest these complex legal questions, I request a two week adjournment in the trial of Mr. Crutch. I also request that a factual hearing be held, before trial.


LEONARD J. LEVENSON

Affirmed June 9, 1977

EXHIBIT E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



----- x
UNITED STATES OF AMERICA :

- v - :

AFFIDAVIT

ISIAH CRUTCH,
LOUIS BAS, JR.,
LEONARD J. CARO,
EUGENE CRUTCH,
HEE SOO KIM, and
ELIE NICOLEAU,

77 Cr. 246 (RLC)

Defendants.
:

----- x

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

JEREMY G. EPSTEIN, being duly sworn, deposes and
says:

1. I am an Assistant United States Attorney in the office of Robert B. Fiske, Jr., United States Attorney for the Southern District of New York and as such I am in charge of the above-captioned action. I submit this affidavit in response to defendant Isiah Crutch's motion to dismiss the indictment because of improper Governmental intrusion into his formulation of defense strategy.

2. Crutch apparently argues that the Government's case against him is tainted because much of its evidence is derived from information obtained by one Suzan R. Abbott during meetings with Crutch at the Metropolitan Correctional Center during the summer of 1976. The purpose of this affidavit is to set forth in proper perspective the contacts between Miss Abbott and the Government during that summer. Because I have

18

been in charge of this investigation since its inception in 1975, most of what follows is based on personal knowledge. In preparing this affidavit, however, I have also consulted Ivan Fisher, Esq., attorney for Miss Abbott, and some of the facts in this affidavit are derived from conversations with him.*

3. On May 20, 1976, Suzan Abbott appeared before Judge Inzer B. Wyatt of this Court and pleaded guilty to one count of Indictment 76 Cr. 459, which charged her with wire fraud.** At that time, she was represented by Ivan Fisher, Esq.

4. Because Miss Abbott played a central role in the conspiracy to distribute and use counterfeit checks that is the basis of this indictment, the Government thereafter attempted to obtain her cooperation in its continuing investigation of other members of the conspiracy. We knew that during most of 1975, Miss Abbott had lived with Isiah Crutch, the architect and moving force behind all of the schemes described in this indictment. After May 20, 1976,

* But for the exigencies of time, the Government would have submitted an affidavit from Mr. Fisher. Mr. Fisher has also advised me that should this Court require his testimony at a hearing, he will be happy to make himself available.

** The count to which she pleaded described a scheme to defraud the Continental Coin Company, Minneapolis, Minnesota and is in all material respects identical to Count Seven of this indictment.

I had numerous conversations with Mr. Fisher in which I attempted to obtain Miss Abbott's cooperation. Our discussions were complicated by the fact that Miss Abbott's guilty plea had by no means resolved her legal problems. She was the subject of complaints pending in the United States District Courts for the Western District of Texas and the District of New Jersey, and of two indictments in the Supreme Court, New York County. Mr. Fisher wanted some assurances that her cooperation would result in the dismissal of some or all of these charges, or at least in their consolidation in the Southern District of New York pursuant to Rule 20 of the Federal Rules of Criminal Procedure.

5. Since her arrest on a bench warrant on May 3, 1976, Miss Abbott had been incarcerated at the Metropolitan Correctional Center. Also incarcerated there was Mr. Crutch, who was (and is) serving a three year sentence for mail fraud imposed by Judge Milton Pollack in 1975. Mr. Fisher, I am advised, decided that one possible way to resolve Miss Abbott's legal problems and also to obviate the necessity of her testifying against Crutch, was for both to enter guilty pleas and to admit fully their participation in the check counterfeiting scheme.

6. At some point after May 20, 1976, Mr. Fisher broached this proposal to me. He stated that he wished to negotiate a plea on behalf of both Miss Abbott and Mr. Crutch, and suggested that each plead guilty to informations and fully disclose their criminal activity. I stated to

Mr. Fisher that as far as the United States Attorney's office was concerned, he represented only Miss Abbott; that we wished to use Miss Abbott as a witness against Mr. Crutch; and that his representation of both constituted a clear conflict of interest. Mr. Fisher responded that there would be no conflict of interest if both pleaded guilty.

7. I had several conversations with Mr. Fisher in May, June, and July of 1976 regarding Miss Abbott's cooperation. I believe that I consistently told Mr. Fisher that we would not negotiate with him concerning Mr. Crutch. I probably did tell Mr. Fisher, however, that we would be interested in offering Mr. Crutch some sort of lesser plea in exchange for his full cooperation which would, of course, include testimony against any of his criminal associates we chose to prosecute. Mr. Fisher replied that Mr. Crutch was not interested in testifying against anyone else. I advised Mr. Fisher that under those circumstances we intended to prosecute Crutch and would not discuss a plea to reduced charges for Mr. Crutch with him or with any other lawyer.

8. I am advised by Mr. Fisher that during the period he was endeavoring to work out a plea for both Crutch and Abbott, he met with them jointly at the Metropolitan Correctional Center on two or at most three occasions. He stated to Mr. Crutch that he was Miss Abbott's lawyer, and would enter into negotiations on behalf of both of them only because it was in Miss Abbott's interest. Crutch asked Mr. Fisher to represent him for the purposes of negotiating a

plea, and Mr. Fisher agreed. At no time did Mr. Fisher ever enter an appearance in any court for Crutch, nor did Crutch ever pay him any fee.

9. Mr. Fisher states that he also told Crutch at one of these joint meetings that if he was not able to negotiate a plea for both, it was more than likely that Abbott would negotiate individually with the Government. He also told Crutch that he thought that sooner or later Abbott would be forced to cooperate with the Government, because her refusal to cooperate would result in her prosecution in numerous federal districts in various parts of the United States.

10. Mr. Fisher further states that at these joint meetings, he did discuss with Crutch and Abbott the scope of their criminal activities. Because he wished to induce them to make full disclosure of these activities to the Government, he concluded that it was necessary that a comprehensive list of all of their crimes be prepared. He thus reviewed their past criminal activities with both Crutch and Abbott. In addition, Crutch prepared a "flow chart" setting forth the three basic methods by which his crimes were committed. He gave this chart to Mr. Fisher. I recall that on one occasion, Mr. Fisher visited me in my office and brought this chart with him. He did not, however, show it to me, and I am to this day unaware of its contents.

11. Miss Abbott's sentence was originally scheduled for June 17, 1976. However, because Mr. Fisher hoped to resolve all of her legal problems prior to sentence and to bring any cooperation to Judge Wyatt's attention, an adjournment to August 17, 1976 was requested and granted. On August 17, 1976, Miss Abbott appeared before Judge Wyatt for sentence. A copy of the minutes of that proceeding is appended as Exhibit 1.

12. As of the day of sentence, no agreement had been reached between Miss Abbott and the Government, and she had provided no cooperation. Although her counsel, Mr. Bohrer (an associate of Mr. Fisher's) told Judge Wyatt that she had on the previous evening decided to cooperate (p.2), I stated to Judge Wyatt (pp.4-5) that her cooperation had been sought but was not forthcoming. Mr. Fisher also stated to Judge Wyatt (p.11) that she had "provided no cooperation to the Government." Judge Wyatt sentenced Miss Abbott to a term of three years imprisonment.

13. At some point following Miss Abbott's sentence, Mr. Fisher came to the conclusion that Crutch had been considerably less than candid in describing the scope of his crimes. He then advised Crutch that he would no longer even attempt to negotiate on his behalf with the Government. Quite coincidentally, Crutch was transferred on the following day from the Metropolitan Correctional Center to another prison. Mr. Fisher thereafter sought to

negotiate only on Miss Abbott's behalf. At some time in October, 1976, Miss Abbott agreed to cooperate fully with the Government and to testify, if necessary, against Crutch. In exchange, the Government agreed not to prosecute Abbott further in the Southern District of New York and to consent to the transfer of cases pending in other districts to this district pursuant to Rule 20.

14. I met for the first time with Miss Abbott on October 29, 1976. The interview lasted several hours and Miss Abbott imparted some information at that time.

15. A motion for reduction of Miss Abbott's sentence was made on December 15, 1976. The Government submitted an in camera affidavit to Judge Wyatt, attached here as Exhibit 2, stating that her cooperation had to that point been limited and requested a postponement of a ruling on the motion. Judge Wyatt refused to postpone his ruling and reduced her sentence from three years to two.

16. Intensive interviews of Miss Abbot began in late December, 1976, and have continued to the present time. Miss Abbott also testified before the grand jury that returned this indictment.

17. As the foregoing indicates, at the time Miss Abbott was meeting with Crutch and Mr. Fisher at the Metropolitan Correctional Center, she was not cooperating with the Government; although we had requested her cooperation, we had not received it. I personally conducted every interview of Miss Abbott in the United States Attorney's Office, and I questioned her in the grand jury. To the

best of my knowledge, she did not impart to me any conversations she had with Crutch during their meetings with Mr. Fisher. Her knowledge of Mr. Crutch's crimes derives from her participation in them, not from the conversations held in Fisher's presence. Miss Abbott was personally involved in the crimes described in Counts 1-9, 12-16, and 20-29. In addition, she knew that the crimes described in Counts 10, 11, 18, and 19 were being carried out, because she observed Crutch meet with and talk to the other individuals involved. She claimed no knowledge of the crime described in Count 17, and provided us no information about it. I do not recall Miss Abbott ever telling me of statements Crutch made during his meetings with her and Mr. Fisher, and she never apprised me of the contents of the "flow chart" Crutch prepared. We invite the Court's perusal of Miss Abbott's grand jury testimony or of the memoranda prepared after her interviews in the United States Attorney's Office should any of these representations be questioned.*

* There are two factual errors in the affirmation of Leonard J. Levenson, Esq., submitted in support of Crutch's motion. In paragraph 12, he states that Crutch gave Fisher a key to a safety deposit box containing a large quantity of counterfeit checks. In fact, the key belonged to Abbott, who had rented the box, and she gave it to Mr. Fisher.

In paragraph 15, Levenson refers to an affidavit submitted by "Mr. Epstein in support of his motion under Rule 35." The Government does not make Rule 35 motions, and the affidavit referred to is by Mr. Fisher.

WHEREFORE, for all of the reasons herein stated,
Crutch's motion should be in all respects denied.


JEREMY G. EPSTEIN
Assistant United States Attorney

Subscribed and sworn to before me
this 10th day of June 1977.


Notary Public

GLORIA MEYER
Notary Public, State of New York
No. 31-0535340
Qualified in New York County
Commission Expires March 30, 1979

EXHIBIT F

Exhibit "F"

UNITED STATES OF AMERICA v. ISIAH CRUTCH

ENDORSEMENT

S 77 Cr. 246

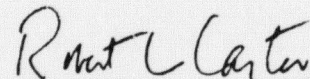
The motion to dismiss the indictment on the grounds that the indictment is based on tainted evidence is denied.

There is nothing even arguably within the realm of tainted evidence to warrant granting of the motion or even holding a hearing. The defendant argues that the indictment ought to be dismissed because it is based in part on the conversations between Mr. Fisher, the defendant and Miss Abbott at a time when Mr. Fisher was representing both. Even assuming that Mr. Fisher was representing both parties, which he denies as I understand it, the conversation among the three parties occurred at a time when the defendant was incarcerated and serving a sentence on another matter and Miss Abbott had pleaded guilty and was awaiting sentence. Abbott was the defendant's paramour. She was no government plant. She was not cooperating with the government at the time of the meetings with Fisher and the defendant. She certainly was not cooperating with the government when she was involved with the defendant in his criminal activities. The defendant knew that she had pleaded guilty and was awaiting sentencing. He knew that her counsel was seeking to have him plead guilty and cooperate with the government in the hope that the sentence imposed on Abbott might be less severe. If in those conversations the defendant disclosed any information which Abbott subsequently gave to the government, he did it voluntarily and ran the risk that it might be used in her own interest. The situation is no where parallel to United States v. Mamone, 543 F.2d 457 (2d Cir. 1976) where a governmental agent was present during defense strategy sessions withholding his real identification and government connections from the defendants. There is no such issue here. Nor does it appear that any information which would show Abbott as a government informer or cooperator at the time of the conversations with Fisher could possibly make a difference in view of Abbott's own partnership in Crutch's criminal activity to warrant an allowance of any extra time to secure such information.

Accordingly, the motion to dismiss is denied and the motion for continuance is denied.

IT IS SO ORDERED.

DATED: New York, New York
June 17, 1977



ROBERT L. CARTER
U. S. D. J.

EXHIBIT G

DAVID BLACKSTONE
ATTORNEY AT LAW

401 BROADWAY, NEW YORK, N. Y. 10013

(212) 226-6684

December 28, 1977

Mr. Isiah Crutch
In care of the Metropolitan
Correction Center
150 Park Row
New York, New York

Dear Mr. Crutch:

Enclosed is a copy of the brief I have filed on your appeal with the Court of Appeals for the Second Circuit. I raised one issue in the brief - Judge Carter's refusal to put the trial off so as to allow Mr. Rivers to substitute for Mr. Levenson as your trial counsel. I contend that this decision violated your Sixth Amendment right to counsel.

At our conference at the MCC on November 18, 1977, you suggested issues in addition to the one I have raised and even gave me a memorandum of law. Since I believe your issues are frivolous, I have not raised them in my brief. My reasons for this conclusion are briefed below.

Because a not guilty plea was directed in your absence and because you were not formally arraigned either on your initial indictment or the superceding indictment, you argue that your conviction must be overturned. I have reviewed the facts on this contention and they may be summarized as follows.

On April 14, 1977, your codefendants were all present and formally arraigned on the initial indictment before the Part 1 judge (Lasker, U. S. D. J.) and entered not guilty pleas. Inasmuch as you were in federal custody serving a federal sentence at that time, it became the government's responsibility to produce you for arraignment and they neglected to do so. Consequently, Judge Lasker, the Part 1 judge, directed the entry of a not guilty plea for you. The case was assigned to Judge Carter. On April 19, 1977, the

Mr. Isiah Crutch
December 28, 1977
Page 2

government filed a superceding indictment and apparently no defendant was formally arraigned on the superceding indictment. Judge Carter simply set the case down for trial. At no time before trial did your attorney object to the omission of a formal arraignment.

While you are quite correct that Rule 10 of the Federal Rules of Criminal Procedure requires a formal arraignment with the attendance of the accused, it has been held by the Supreme Court of the United States that failure to comply with arraignment requirements constitutes a mere technical irregularity not warranting a reversal of a conviction, if not raised before trial. *Garland v. Washington*, 232 U.S. 642, 34 S.Ct. 456, 58 L.Ed. 772 (1914).

You raise an additional point in connection with the government's failure to produce you before the Part 1 judge on April 14, 1977. Your contention is that if you had been produced you would have pleaded guilty before Judge Lasker and had the benefit of his lenient sentencing policies and a lenient sentence. Instead your case was assigned to Judge Carter who is known to be much more severe, and he in fact gave you ten years. Your premise that you would have had the benefit of a Lasker sentence if you pleaded guilty before him in Part 1 is wrong. Pursuant to Rule 7 of the Individual Assignment and Calendar Rules for the Southern District of New York, Judge Lasker would have had to refer your sentence to Judge Carter even if you pleaded guilty in Part 1. This is so because Rule 7 provides that in multiple defendant cases a plea of not guilty by any defendant refers the entire case to the assigned judge.

The most perplexing point you make - perplexing because I have difficulty following it - concerns the motion of your trial counsel to dismiss the indictment on the ground of tainted evidence and his connected motion to strike the testimony of Susan Abbott. The supporting affidavit of your attorney Leonard J. Levenson on the motion, the government affidavit of Jeremy Epstein in opposition, and the hearing testimony of Ivan Fisher on the motion establish this much:

On May 20, 1976, Susan Abbott, a principal witness against you at trial, pleaded guilty to wire fraud before Judge Inzer B. Wyatt and her case was postponed for sentence. Susan Abbott was being represented by Ivan Fisher, whom she privately retained. After the plea was taken, Jeremy Epstein, the prosecutor, discussed with Mr. Fisher the possibility of obtaining Susan

Mr. Isiah Crutch
December 28, 1977
Page 3

Abbott's cooperation in the broader investigation that eventually led to your indictment.

At that time Abbott was aware that her cooperation could not only benefit her on sentence but also could halt other pending state and federal investigations against her. Mr. Fisher spoke to Susan Abbott about cooperation but she was reluctant to inculcate you to help herself. [Tr. 145] It was about this time that you requested Mr. Fisher to meet with you at the MCC. [Tr. 145] When Mr. Fisher visited you he made it clear that his interests were those of Susan Abbott. [Tr. 152] Nevertheless, it occurred to Mr. Fisher that if he could negotiate a package deal by which both Susan Abbott and you would plead guilty and disclose information to the government, Abbott would not have to face the problem of implicating you in order to help herself. [Tr. 145] Thus it was in this posture that Mr. Fisher agreed to represent you for the purpose of working out a package deal with the government. Meetings between you, Susan Abbott, and Mr. Fisher ensued at the MCC. At these meetings both you and Abbott revealed your respective roles in the conspiracy to Mr. Fisher. You prepared a "flow chart" describing your operation and gave it to Mr. Fisher. Eventually negotiations with the government broke down and Mr. Fisher ceased representing you because he felt you had been deceiving him about the scope of your operation. Nevertheless, well after these joint meetings at the MCC were held, Susan Abbott began cooperating and talking for the first time with the government.

In Mr. Levenson's affidavit, he contends that there was prosecution misconduct in allowing Mr. Fisher to represent both you and Susan Abbott. Mr. Epstein's affidavit answers this by stating that when Mr. Fisher broached the subject of representing you, Epstein told Fisher:

"That as far as the United States Attorney's office is concerned [Mr. Fisher] represented only Miss Abbott, that we wished to use Miss Abbott as a witness against Mr. Crutch and that [Mr. Fisher's] representation of both constituted a clear conflict of interest."

Insofar as you claim prosecutorial misconduct I see no substance to the point. This is not a case where the government allowed an informant to participate in defense sessions. See, *United States v. Mamone*, 543 F2d 457 (2nd Cir. 1976); *United States v. Rosner*, 485 F2d 1212 (2nd Cir. 1973), Cert. denied, 417 U.S. 950 (1974). In fact, at the time Susan Abbott and you

Mr. Isiah Crutch
December 28, 1977
Page 4

were participating together in sessions with Mr. Fisher, she was not on the prosecution team, although both of you were negotiating through Mr. Fisher to join the team. At the trial, Mr. Levenson shifted his position somewhat and moved to strike Susan Abbott's testimony upon the ground that her testimony violated your attorney-client privilege. I find this claim without substance also in light of these facts. First, Susan Abbott testified before the grand jury and at the trial about her personal knowledge of the conspiracy. She did not testify about what she learned from you at those joint conferences, and Mr. Levenson did not claim or attempt to prove otherwise. Second, neither the grand jury nor the jury was told anything about the joint conferences. And third, Mr. Epstein's affidavit states:

"I do not recall Miss Abbott's ever telling me of statements Crutch made during his meetings with her and Mr. Fisher, and she never apprised me of the contents of the "flow chart" Crutch prepared.

The law is that: "only the communication is privilege; the client's knowledge is not. He can, therefore, be questioned about what he himself knows even though he invokes the privilege." Weinstein, Evidence, ¶ 503 (b) (03).

If you believe that I am incorrect in not raising these or any other issues, your recourse is to send a letter to the Court of Appeals requesting the assignment of another lawyer to brief the points you wish to have raised. Your appeal is scheduled to be argued during the week of March 13, 1978.

Very truly yours,

David Blackstone

DB:lt
Enclosure

